Where the raiyats of this province have a tendency to being nomadic, the landlords have more trouble to retain them than to drive them away; the landlords must concede much to them; rackrenting their holdings in seldom to be feared.

The raiyats of well-settled estates may for one or two reasons abandon their holdings—owing to their being rackrented, or to their being in debt. When raiyats abandon their holdings owing to their being rackrented, it is not probable that the initial rent of the new raiyat will be a higher one; besides, the resident raiyats will in so much be gainers, that the rackrented holding will become a non-occupancy holding, and can no longer be taken into account when estimating "prevailing rates."

Should the raiyats abandon their holdings by reason of their indebtedness, with legalized transferablility the landlords could hardly be the gainers.

Any effect that initial rents may have on prevailing rates must, from their nature, be very slow in their operation.

The rents of occupancy-holdings are not likely to be affected by the initial rents of newly reclaimed land, and, even when the raiyats who have reclaimed the land have acquired rights of occupancy in it, the rents of others can only be affected to an inappreciable extent by them.

Where the land lying waste on an estate is out of proportion to, or greater than, the cultivated area, we may be sure the uncultivated land helps to keep rates low; any attempt to demand higher rates for newly reclaimed lands than are being paid for occupancy-holdings on the estate would drive away raiyats, not attract them.

We may, I think, admit that it is very doubtful whether a prevailing rate in the hard-and-fast acceptation of the term adopted by His Honour ever existed over any wide extent of country. I certainly know of no district, estate or village in which one uniform rate exists for each class of land; but it should be borne in mind that the old Regulations declared that, where there were "no" pargana rates prevailing, "the collections were to be made according to the rate payable for land of a similar description in the places adjacent."

When we come to consider that the landlords of this country have from the remotest period been declared entitled to a certain fixed portion of the produce in lieu of rent, and the tendency of our laws has been to allow the raiyats to grow whatever crops they pleased on their lands, and to displace produce-rents by money-rents, it is but logical to declare that lands of equal value shall pay equal rates, and to allow one raiyat's rents to influence another's, more especially that fixity of tenure is by law attached to a holding.

To my mind the mistake lies in the application of the rule, not in its principle.

The Courts as a rule are satisfied to enhance the rent of a raiyat's holding when it is shown that the land in its "immediate" vicinity is paying a higher rent. This, I hardly think, was ever intended by "in the places adjacent." The rule as applied or interpreted by the Courts is often harsh in its action. To remedy the procedure of the Courts it is not necessary to deprive the landlords of a valuable right—a right that I consider just in principle. I would rather give the rule a wider range, and denote its application with an illustration.

If I might be allowed to make a suggestion, I would suggest that the sub-section should be allowed to run somewhat as follows:—"that the rate of rent paid by the raiyat is below the average rent paid by the occupancy-raiyats of the village."

I do not know if I have received a copy of Mr. Dampier's paper on the subject; if I have, I have mislaid it and cannot refer to it now; but, from the remarks made in paragraph 41 of the Government of Bengal report, the scheme he has propounded would have much the same effect as the above.

I am still of opinion that section 44 (*a*) should be omitted from the Bill.

Notes by the Hon'ble T. M. GIBBON.

Enhancement on ground of rise in prices.

I AGREE with His Honour in deeming the above a legitimate and valid ground of enhancement, but I disagree with His Honour in thinking that it affords ample compensation to zamíndárs for the withdrawal of other grounds; nor do I agree with His Honour in deeming it necessary, or even right, to withdraw the power given to the Court under section 48, substituting a section which will direct the Courts to make an allowance for the increase in the cost of production previous to decreeing enhancement on account of a rise in price.

In discussing this subject His Honour has throughout his able minute accepted the lessons taught by political economists in England and their theories of "rent" as the basis of his argument. His Honour has, I think, (and I say it with diffidence), omitted to see that rent as understood by the political economist, and rent as it is constituted in this country, are not the same.

The term "rent" as understood by the political economists in England and "rent" as it exists in this country both denote the sum paid by the occupier of the soil for the use of its natural properties, and in so much it denotes the same in both countries; but the conditions under which the tenants of the two countries hold their lands and the authority of the landlords over their tenants, are so dissimilar, that with this translation of the term the similarity ceases. In England the landlord is the absolute proprietor of the soil, with power to eviet a tenant should he decline to pay the rent demanded; and the only restraint on the landlord's

power to enhance is his fear of having his farm thrown on his hands; the landlord's "rent is a competitive rent, it is a share of the "profits" of cultivation. On the other hand, in this country the tenant may under the law acquire a right of occupancy in the soil; his landlord's power to evict him is restricted; and without the power to evict there can be no competitive rents.

From a very early period the landlord in this country has been entitled to a certain portion of the "outturn" of the crop as rent, in some places a larger, in others a lesser, share, but still a share of the outturn, not of the profit; be there profit or loss, his rents varied with the outturn; cost of production was no concern of his.

At an early period the British Government perceived that, as long as the landlord could demand a share of the crops as rent, valuable commodities requiring special knowledge, large means or incessant attention could not be grown, and determined upon encouraging the substitution of money-rents for rents in kind; where money-rents now prevail, thay are the direct outcome of the policy of the British Government.

There can, I think, be no doubt that the Government of Lord Cornwallis, when encouraging the substitution of money-rents for rents in kind, fully intended that the landlord should participate in the progressive prosperity of the country. Debarred from demanding competitive rents, to allow him to participate in the future prosperity of the country, the Government must "enable" him to do so, or he will otherwise be reduced to the position of an annuitant on his own estate. This can be best effected by allowing him to enhance on the ground of rise in prices.

His Honour approves of provision being made in the Bill for enhancement on the ground of rise in prices, but wishes to empower the Courts to make an allowance for an increase in the cost of production.

To effect this His Honour would strike out section 45 (*b*) from the Bill, substituting a new section for section 48.

Section 45 (*b*) declares that the Court shall not enhance the rent so that the enhanced rent exceeds the previous rent by more than four annas in the rupee.

This is again made subject to section 48, which declares that "the Court shall not in any case decree any enhancement which appears under the circumstances of the case unfair."

The enormous discretionary power hereby vested in the Courts under this section is, I believe, without precedent; without rules to guide the Court, it lays the Government open to the charge of leaving enhancement at the mercy or bias of the presiding officer and no longer governed by the law.

The only safeguard we have against the abuse of this power lies in the powers of supervision vested in the High Court, in all instances salutary, but insufficient to prevent loss of time and trouble to the litigants.

Wrong as I believe the section to be in principle, I would support the provision as it stands as a matter of policy.

Taking into consideration the extraordinary differences of rates paid for land in the same village, I do not see how the poor are to be protected if this section is not retained. Our Chumparun bighe varies from three to six standard bíghás to one local bíghá, and the rents of the raiyats vary from eight annas to eight rupees per local bíghá in the same village. Under the Bill as it stands, the landlord would receive two annas increase on rise in prices from the one raiyat, and sixteen times that amount from the other; and, unless the Court has the power to declare that the raiyat is already paying a rent out of all proportion to the rent others are paying, great injustice may be done. This cannot be done by rule; it must be left to the discretion of the Court.

If some such discretionary power is not given to the Court, the effect of the rule will be such that the heavier the rent the heavier the enhancement.

I would beg of you to remember that the amount to be gained by the enhancement makes no difference in the cost of the suit.

If the rule His Honour wishes to lay down for the guidance of the Courts is adopted, all must be treated alike, and the poor will remain uprotected. Besides objecting to His Honour's suggestion that "the Courts should be authorized to make an allowance for increased cost of production" on the above grounds, I object to it on grounds apart from these. I object to it on its merits.

If His Honour had been content with suggesting that the Local Government should be authorized to omit a season of calamity or famine from the price-list of a district, or that the Courts should have discretionary power allowed them to do so, I would have supported the proposal; but I am not prepared to follow His Honour to the lengths he proposes to go.

His Honour presumes that any rise in prices would solely affect the landlord's share of the outturn. This, I think, is incorrect.

Without going into any minute calculation as to the exact shares into which the outturn is divided, we may assume that it is divided, roughly speaking, into three portions—one portion to cover cost of production to the raiyat, one to cover the landlord's rent, the third may be looked upon as the raiyat's profit; but whether the third share is profit on raiyat's cash capital or labour capital is of little consequence here.

Any rise in prices will directly affect the value of the whole outturn, not the landlord's portion alone.

The landlord's rent in this country is supposed to represent a share of the outturn, the share varying from one-fifth to one-half. To this he is, theoretically speaking, entitled what-

ever the value of the crop may be. The balance is the raiyat's, but how much of the balance may be considered cost of production, and how much profits for the subsistance of his family, no one can say. I think, in a country where holdings are very small and families very large, the farmer may consider himself repaid for his trouble when he is able to subsist by farming the ordinary food-crops of the country. If he wishes to live in affluence, he must turn his attention to the cultivation of more valuable crops.

The implements of the country are of the simplest kind; if they invest in improved patterns, they will do so with the hope of receiving a better outturn.

Draught cattle may become more expensive, but, as the raiyats are themselves the breeders of the cattle, it cuts both ways.

The labourer's wages are usually paid in grain; therefore, if the cost of production becomes heavier, so will the portion of the crop which goes towards paying for cost of production become more valuable.

I can think of only one way in which the cost of the production of staple food-crops can become greater without any proportionate increase in the value of outturn taking place, and that is by the extension of the cultivation of other and more valuable commodities to the displacement of the cultivation of staple food-crops—commodities which can, from their intrinsic value being greater, afford to pay higher wages and at the same time appropriate more labour.

But as the landlord cannot by any possible chance gain any direct benefit under the Bill from the cultivation of the more valuable commodities on his estate, excepting indirectly to the extent that the cultivation of them will force up the price of food, and as the whole benefit to be derived from their cultivation is to accrue to the tenant, it is not fair to debit the landlord with the extra cost of such labour.

I agree in the decision come to by your Select Committee that staple food-crops should alone be taken as the standard of value.

A province may be enriched by the extension of the cultivation of the more valuable commodities, but the very fact of a greater number of farmers taking to their cultivation, and increasing their supply, would assuredly reduce their marketable price

I agree with His Honour in thinking that the price of food-grains generally must, for some years to come, have an upward tendency, and I agree with His Honour in thinking that the prices ruling at the principal grain-mart of the sub-division should be accepted as the standard, as least liable to undue fluctuations.

I would prefer taking the average of the prices current during the whole year to taking the prices current at harvest-time, as being less liable to the influence of panic or speculation at a time of impending scarcity.

Note by the Hon'ble T. M. GIBBON.

I OMITTED to remark in my notes on "an allowance to be made for increased cost of production" that His Honour has in support of his argument cited the ruling of the well-known case of *Thakurani Dassee*. I would respectfully beg of you to read that ruling carefully, to see if it in any way supports His Honour's arguments.

Four Judges—Messrs. Trevor, Macpherson, Phear and Norman—supported the rule of proportion. Sir Barnes Peacock alone dissented, wishing to apply the lessons of the political economist Malthus.

In the case of *Thakurani Dassee*, Sir Barnes Peacock only repeated his former decision in the case of *Hills* v. *Ishwur Ghose*.

To learn what His Honour's Government thought in 1881 of this application of the abstract definitions of rent of Mr. Malthus by Sir Barnes Peacock to the law of this country, I would beg to refer you to page 81, Vol. I, of the Bengal Report. Without quoting all the Bengal Government then said of Sir Barnes Peacock's decision in *Ishwur Ghose's* case, I may be allowed to point out that the Bengal Government then thought that "this decision was at once felt by every one acquainted with revenue law and history to be a fatal blow to the customary rights of the whole cultivating class in Bengal."

Enhancement on grounds of landlord's improvements.

I agree with His Honour in thinking some limit may be placed on the landlord's power to enhance on account of improvements made otherwise than under an express agreement with his tenants. It is a mistake not to leave it open to the landlord and tenant to come to an understanding among themselves with reference to the return the landlord is to receive in the shape of "enhanced rents" (if it can be called rent, which it is not) for the capital he expends.

This can certainly be evaded by the landlord and tenant entering into an arrangement among themselves, that the landlord is to receive a certain amount of "interest" on any money he may expend on improvements.

It would then be, what it really is, a return for the capital he expends, not "rent." It is a serious matter to say that people who enter into arrangements of this kind with their free consent, and with their eyes open, believing that it will benefit themselves, shall be allowed to withdraw from their contract if the works erected turn out otherwise than as they expected. I am not prepared to go so far.

Take, for instance, the Sarun irrigation works constructed by Government on an understanding with the planters and zamíndárs that a certain amount per annum shall be paid to

Government as a return for their expenditure. Do you think the planters would be justified in withholding their subscriptions if the water did not benefit their lands?

I think in all such matters the people should be left to themselves. The tenant is just as likely to know what will benefit his lands, and what will not, as the landlord. I think it is impossible to limit in a Rent Bill the return one person shall agree to pay to another for capital expended.

Enhancement under registered contract.

Under the Bill as it was submitted to your Select Committee, a holding might be enhanced to the extent of six annas in the rupee, or 37½ per cent., provided the enhanced rent did not exceed one-fifth of the gross produce of the land, and the landlord was to be debarred from again enhancing the rent within a period of ten years.

Your Select Committee struck out the gross-produce limit, and limited enhancement under contract to 12½ per cent. for a period of seven years, and to 25 per cent. for a period of fifteen years.

Judicial enhancement may be effected to the extent of 50 per cent. increase on the former rents under the prevailing-rate rule, and to the extent of 25 per cent. on rise in prices.

That some restrictions should be placed upon voluntary enhancement, in order to protect the poorer class of raiyats, was, I think, admitted on all hands; but, with reference to the extent and nature of such restrictions, there was, I believe, much difference of opinion.

The reason assigned by the Government of Bengal for reducing maximum limit of enhancement, and for increasing the period for which it was to run, was the withdrawal of the one-fifth gross-produce limit.

His Honour now wishes to re-insert the gross-produce test, and again reduce the maximum limit from 25 per cent. to 12½ and to again increase the term.

Were I assured that the gross-produce test would work without friction, in other words, could possibly be applied, or that the Bengal Government could show me how they proposed to overcome my difficulty, I would unhesitatingly support their proposal as the very best means of preventing the poorer class of raiyats from being rackrented; but neither from the discussion which took place in Committee, nor from the minute now published, have I realized that they see their way to overcoming it, or even that the Government has realized wherein our difficulty lies.

His Honour has stated one of the objections to be "that the limit, though fair for particular localities and particular crops, might not be so for other localities and other crops."

To me it is not the matter of limit wherein the difficulty lies, but the practical application of the test. But in reference to the objection stated by His Honour no attempt is made to show how it can be got over.

With reference to the practical application of the test, I would beg of you to remember that the Bengal Government wish to take "specified" staples as the standard by which to test the value of the land, not the "particular" crop for which the land is suited, or "any crop" grown in the village.

For the sake of example, take wheat, barley, oats for the winter-crop test, rice and maize for the summer. The number of staples must at any rate be limited.

I am ready to admit that any jury consisting of practical farmers—men with a fair average amount of intelligence—would be able to estimate the probable outturn of any acre of land sown with any stated crop, provided the question is fairly put to them; that is to say, if they were asked "what would be the probable yield of such a field in an average season, if sown with wheat?" The amount at which it was estimated by each man would vary very little; but the difficulty does not lie here, or even with the jury. The difficulty lies in having to estimate the value of a field, the soil of which is only suited for special crops, by staples that the soil is quite unsuited to grow. Many fields that will not yield either rice or maize will grow good sowan, murroah, sweet potatoes, &c., &c.; many lands that will not yield five rupees when sown in cereals will yield fifty when sown with chillies, and *vice versâ*.

It seems to me that if the Government's proposal becomes law, the sum in arithmetic which each juryman will be required to solve will be—"If a field that will yield 20 maunds of a given cereal has to pay four maunds in rent, what is a field that will not yield anything in cereals, but will yield any amount of (say) cotton, to pay?" If this difficulty is overcome, the rest is only a matter of details.

Unworkable as I believe it to be, I would infinitely prefer seeing the test adopted than to be constantly reducing the limit.

For six years the Bill has now been discussed and re-discussed, altered and re-altered, until the original is not recognizable in its present form. The special grievances that the Government intended to redress have been almost forgotten in the *interim:* our over-caution trenches very closely on indecision.

The changes and alterations now proposed by the Bengal Government in every portion of the Bill are so great, and so far-reaching, that they will necessitate a re-casting of the whole Bill, and with it at least another two years' discussion by the public.

The amount of injury that this would do the country, to both landlord and raiyat, I need not point out to you; I at least would look upon it as a calamity.

The relationship of landlord and tenant is now strained to its utmost; a little more and you will have the whole country on your hands. The zamíndárs are strongly impressed with the idea that the Government has no sympathy with them, and hardly expect to be dealt

fairly by. The raiyats measure their gains by the opposition of the landlords, and believe the millenium is at hand; another year of agitation, and you will, in order to govern the country, have to give them a sad awakening.

I should beg of you only to make such changes in the Bill as will permit of its being passed this Session; if it is not, or cannot be, passed this Session, I would pray of you to drop it. You will do more harm by allowing the discussion to go on for another year than you will remedy in five under the Bill. At any rate, do not let it appear as if every alteration now to be made in the Bill was to be a fresh restriction on the landlord; if voluntary enhancement must be restricted, give the landlords a set off by withdrawing the limit to be placed on judicial rents under the prevailing-rate rule.

Note by the Hon'ble T. M. GIBBON,—*(dated 28th October, 1884).*

Commutation.

The commutation clauses in the Bill I do not like; I think the defendant will in each case be the sufferer.

I think commutation of rents should only be allowed when the raiyat wishes to cultivate a more valuable crop than the edible crops he has been in the habit of growing on his *bhaoli* land, and in this instance he should be bound to pay a full average of the proceeds of former years.

His Honour, on the contrary, would make these provisions still more stringent.

His Honour finds a proposal, supported by the high authority of Messrs. Dampier and Reynolds, that the commuted rent should not exceed the rent of the road-cess jamábandí, *plus* what rise in price may have occurred since the road-cess assessment was made. As final evidence against landlord or tenant, the road-cess jamábandís are worthless, and I hope I may be pardoned for saying so; but I doubt very much whether either of the above gentlemen ever examined the road-cess jamábandís on this point for themselves or they would hardly support such a proposal. The framers of Act X of 1871 fully intended that the jamábandís to be called for, for the road-cess assessment should be final evidence as against the zamíndár, and with that end in view made provision under sections 17 and 18 of the above Act to permit of any one who might consider himself aggrieved by the jamá entered against his name contesting its correctness.

This provision of the law was not re-enacted under Act IX of 1880, nor does Schedule A, Part II, necessitate the entry of all particulars of a holding; whereas the original Act required close scrutiny of the jamábandís, in order that they might in time become valuable evidence. The latter Act was enacted for fiscal purposes only.

The state of the Government exchequer at the time of the introduction of the Act necessitated rapid action instead of deliberate enquiry.

Jamábandis were accepted anyhow, and from anybody. The provisions of section 17 of Act X of 1871 were allowed to become a dead-letter.

Jamábandis, as a rule, do not show the gross produce of the *bhaoli* lands; they only shew the cash rent due by the raiyat for the undelivered portion of the outturn.

Raiyats, as a rule, do not pay road-cess to their landlords on their *buttayea* lands in this part of the country,

If you wish to declare any evidence final as against any person, first make it necessary to take papers from that person with his signature attached; papers that a person has never had an opportunity of examining should not be accepted as evidence against that person.

To introduce such a provision now may be dangerous; knowing with what object it would be introduced, unscrupulous people might be induced to lodge enhanced jamábandis.

The non-occupancy-raiyat.

Short of making occupancy-rights inherent in the soil, the provisions of this chapter go almost as far as it is possible to go to secure the non-occupancy-raiyat fixity of tenure.

The gross-produce limit, I do not think, can be introduced for reasons previously stated. Compensation for disturbance I do not approve of. I certainly am not prepared to support its re-introduction into the Bill at the cost of having to cancel sub-section (7) of section 60 of the Bill.

To re-introduce the compensation-for-disturbance clauses into the Bill, I deem it would be necessary to cancel the above sub-section, as it was introduced into the Bill at the request of the Bengal Government, and accepted by the Select Committee as a set-off to their non-acceptance of the compensation clauses.

If it is necessary to go any further in providing security of tenure to the non-occupancy-raiyat, declare that the initial lease shall be for a particular term.

Bastu lands.

I quite agree with His Honour in all he has said on this important subject.

Raiyats who erect their huts on their own holdings should, as a matter of course, hold the lands on which they are built on the same conditions as they hold the rest of their holdings.

The only point to be considered in reference to the above is the effect of transferability. When a raiyat sells his holding he will be obliged to transfer his hut with it as a matter of course; but this should be made quite clear.

A raiyat who is allowed to erect a hut on a village site should, as a matter of course, acquire a permanent interest in the land on which it is erected, but he should retain the land only for such purpose. Undisturbed possession for twelve months after erection of the building should, in all instances, be sufficient proof of right to remain on the land.

He can only acquire a site to build on with the consent of the landlord direct or implied.

If he abandon the site, the land in all instances, and in many districts the hut, reverts to the landlord. If the raiyat sells his hut or house, or it is sold up under a decree of Court, the material with which it is made is alone sold; the site reverts to the landlord. It is optional with the landlord to allow the purchaser to retain the site or give him notice to take away the material.

No raiyat has the right to cultivate any portion of the village-site without the direct consent of the landlord.

The raiyat's right to hold the land permanently for residential purposes should be assured. There can be no enhancement law for lands set aside for building purposes; the initial rent, if any, must be a matter of contract; the initial rent must be a permanent one.

For the sake of the village-community the landlord's power of veto, as above detailed, should be assured.

Receipts and accounts.

In reference to this subject I have from time to time said all I had to say. I would now only urge the Government to insist on all zamíndarí books of account, either tendered or summoned in evidence in a Court of law, being returned to their owners as quickly as possible.

The gentlemen who talk so fluently about insisting on all accounts being kept in bound books have no idea of the difficulties we encounter in recovering our books from the Courts, or the cost entailed, or the break that occurs in the routine of our business when they are so detained. I would beg of you to remember that books of account kept on large zamíndárís are as often called for by the Courts on other people's business as on account of their owners.

The delay in recovering books of account from the custody of the Courts is encouraging people to keep duplicate books, one for the Court and one for their own use; and I can hardly conceive anything more objectionable.

Make it possible for zamíndárs to keep their accounts in bound books, encourage them to do so, and the rest will follow as a matter of course.

Proposals regarding pasturage, fisheries, and forest rights.

In reference to the above, His Honour is of opinion that questions of enhancement of the rent, reduction of rents and acquisition of status should, be provided for in the Bill.

This appears to me, from the very nature of such tenures, an impossible task. To me it is quite new to hear that "pasturages, fisheries or forest-rights" are now, and ever have been, dealt with as on the same footing as "agricultural holdings." I have never heard of tenants being in a position to acquire occupancy-rights in them.

The law does not permit them to do so; I have never heard of tenants who held fisheries, excepting under terminable leases or permanent grant from their landlords. I have never heard of a tenant who was in a position to claim a right to hold the above at a judicial rent.

I will reserve what I have to say to the above being made subject to the incidents attached to an occupancy-holding, until His Honour's scheme with all its details, comes before your Select Committee.

His Honour is under the impression that, because some of the above items were included by your Select Committee in their form of rent-receipt and rent-account, they intended them to be looked upon as among the incidents of a raiyati holding. I do not remember anything occurring in Committee that would permit of such a construction being put on their being included in the account; and, had I thought it possible to put such a construction on their act, I for one would have protested against their being so included.

I think all the Committee intended was that each account should, if possible, show all that is due by one raiyat to his landlord. Pasturage in which alone there might be a possibility of the raiyat acquiring a right by long prescription, is not included in the account. Forest-rights, such as the right to gather fuel and cut timber, is not usually paid for on the area, but on the quantity taken. *Zulkar* or fruit depends on the season. *Zulkurs* or fisheries are usually settled under contract, and are in many places dependent on the rainfall of the season.

Note by the Hon'ble T. M. GIBBON.

Improvements—Acquisition of irrigation-channels for landlords.

No portion of this otherwise most able report of the Bengal Government has astonished me more than those portions of it which refer to improvement; and I am very very disappointed at the decision come to by His Honour on the subject. I would fain hope that when His Honour once realizes how difficult it is for us, living in North Behar, to stave off famine without some such provision as was suggested in Committee being made in the Bill, His Honour will be induced to accede to our request.

His Honour cannot have realized the enormous difficulties both landlord and raiyat have to contend against in carrying out improvements against the wishes of a hostile raiyat. One hostile or obstructive rayiat may starve a village-community; and such difficulties will increase year by year as the public become better acquainted with the law.

At the risk of being tedious I would beg to remind you that the specific propositions submitted to your Select Committee were as follows:—

(1) If the landlord or any raiyat holding land in the vicinity is likely to be injured by the raiyat making an improvement, an appeal should be allowed to the Collector, who should be empowered either to allow or prevent such improvement, and whose decision should be final.

(2) On the application of the landlord or several raiyats jointly, the Collector or Sub-divisional Officer should be empowered to allow the cutting of irrigation-channels and arrange for the distribution of water generally.

(3) When, on the application of the landlord or on the joint application of several raiyats, the Collector makes arrangements for the distribution of water, he should be empowered to compensate individual raiyats who may suffer temporary or permanent loss by such acts.

(4) Such compensation to be paid into Court either before or after completion of work, as the Collector may decide.

I would beg to point out that the above would be to the benefit of the raiyats as well as to the benefit of the landlord. I would beg to remind you that a raiyat must in all cases bring water "to" his land and "across" some one else's land to irrigate his holding. He must cut a channel "to" his fields and "across" his neighbour's to irrigate his holding. Under the present law, if a landlord or a number of raiyats jointly dam up a stream to irrigate a village, the water cannot be carried through or "across" any raiyat's field without his consent. If a raiyat wishes to irrigate his land from a village well, he must first procure the consent of his neighbours who hold land situated between his holding and the well before he can do so.

Any improvement that will affect large areas may temporarily affect a few injuriously, or, even if raiyat is not likely to be injured, he may still declare he is likely to be so, and prevent others from being benefited.

It was to take away one man's power to injure the many that the above resolutions were brought forward in Committee.

Every season that the rains cease unusually early the executive brings pressure to bear on zamíndárs to assist their raiyats to dam up the streams and to irrigate their lands to stave off famine; but the law does not protect either the official who wishes to assist the raiyats or the landlord who is willing to stand the cost. I would appeal to every Collector and Sub-divisional Officer who has served in North Behar in a season of impending scarcity to say how often they could have, and would have with the assistance either of the landlord or raiyat, staved off scarcity, had the law empowered them to act in the matter, or had they not feared a suit for damages being brought against them if they acted on their own responsibility. I would appeal to the records of their own Courts to show how often disputes about water end in a breach of the peace.

When it has once been agreed by both parties that an improvement is necessary, it becomes a matter of little importance whether the landlord or raiyat should have the prior right to make it.

I think a raiyat should in all instances be the best judge as to whether any alterations to be made on his holding be an improvement or not.

Insomuch as the Bill allows a landlord to make an improvement on a holding for the good of that holding, I do not approve of the section as it stands. A landlord may wish to cut a drain to drain the land; the raiyat may elect to retain the water.

If the raiyat wants the improvement, let him make it himself if he wants it; if he cannot ask assistance of his landlord; if he objects to it and does not think it an improvement, the landlord should desist from making it.

The Patna-Conference fully recognized the importance of the Collector's being empowered to act in an emergency, and the suggestion made by Mr. Henry and adopted by the Conference had that end in view; but they went much further than anything proposed in your Select Committee.

Their reply in the negative given to the question put by the Government of India I take to mean that they negative the idea of allowing distributaries to be cut where the landlord makes the improvement for the sake of profit, but would allow him to do it for philanthropic purposes. To this I have no objection; but I submit that under the resolutions submitted to your Committee the Collector would in all instances still remain the best judge as to whether an improvement should be allowed or not. If the landlord made it for the benefit of others without expecting any return, he could allow it to be made; if he made it for profit, he could refer him to the Civil Courts to prove his right to do so.

There are few among us who will not pay ample damages, or risk a suit for damages where it is necessary to stave off famine from the many; but most of us will think twice before we make an improvement if we have to be arraigned for trespass or mischief at the end of it.

Measurements.

I quite agree with His Honour in thinking a chain should in all instances be used for measurement; but I do not quite follow His Honour in what His Honour says about "lakhi-

ráji" lands. "Lakhiráji lands" I take to mean revenue-free lands, not "rent-free" lands.

Of the former I know of none in North Behar. Between revenue-free tenures and rent-free holdings a wide distinction is made.

At the time of the Permanent Settlement it was found that numbers of raiyats held lands free of rent from their landlords, who were sometimes zámíndárs, sometimes only thikadárs. A regular register was made of such holdings, and is known in Chumparun as the "*sun do kee buhn.*"

All above a certain area (nominally 100 acres) were resumed by Government after the Permanent Settlement and revenue assessed on them, and zámíndárs were given permission—I may say pressed—to resume the others themselves, but only in very rare instances acted on such permission.

Again, under Act X of 1859, clause 28, gave the zámíndárs another chance, but again they refused to take advantage of it.

These grants and *bhirts* granted since the Permanent Settlement are for a specified area only.

Although they do not pay rent, they are exactly on the same footing as ordinary occupancy-holdings, and should not be specially legislated for.

In the majority of instances the holders acquired their lands under sufferance; their titles are perfected by prescription.

Summary sale of registered tenures.

I will reserve what I have to say on this chapter until the Select Committee meets—until we are informed which of the numerous suggestions for the more speedy realization of rents the Government will adopt.

I would now only submit a typical case which has come under my own experience as Manager of the Bettiah Estates, every figure of which I can vouch for, and it was for cases such as this that we asked for a more summary procedure for the realization of rents:—

Burgown Tenure, consisting of 17 villages.	Area 9,870 acres=29,610 standard bighás.		Tenure-holder's collections, Rs. 13,500-4-3.
Revenue to Government by Rájá, Rs. 2,237-14-8.	Road-cess and public work-cess, Rs. 779-15-8.	Málikána to Bettiah Rájá, Rs. 208-8.	Total payable by tenure-holder, Rs. 3,226-6-4.
Payable—			
Collected last year by help of Courts, Rs. 2,074-15.	Have got another decree for Rs. 3,796-9-5, but not yet recovered.	This suit was commenced on the 18th August, 1883; decree obtained 16th July, 1884.	I have just had to institute another suit for Rs. 3,031-6-2.
Out of five years' rents, the tenure-holders have paid me Rs. 2,724-15-4 of their own free will without suit.		The Mahárájá of Bettiah has had to pay the revenue regulary under the sunset law.	

His Honour is evidently under the impression that it is only the rack-rented raiyat who refuses to pay his rents and has to be sued by his landlord. I do not think the records of the Courts will bear His Honour out in this opinion. My experince certainly does not. One of the prime reasons given for the introduction of this Bill was the difficulty in the way of the landlords collecting their rents under the present law; but nothing has yet been done to redeem this promise; on the contrary, by taking away the landlord's power to evict a raiyat for non-payment of his rents and substituting sale under a decree of Court, we have materially retarded their collection. However it may be done—by whatever means—the promise should be redeemed.

No. 1926—1009 L.R., dated 28th November 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,

To—The Secretary to Government of India, LEGISLATIVE DEPARTMENT.

I am directed to submit, for the information of the Government of India, the accompanying copies of a representation from Mr. John Stalkartt on the Bengal Tenancy Bill, and to say that the Lieutenant-Governor desires to place it before the Government of India separately, as it has come too late to be conveniently included in the same volume with other reports.

Dated 3rd November 1884.

From—J. STALKARTT, Esq., for the Raiyats of India,

To—His Honour the Lieutenant-Governor of Bengal.

Permit me, on the part of the raiyats, to thank Your Honour for forwarding their letters to Your Honour, so that the Government of India has published them in the Government Gazette, &c., &c. May I be allowed to bring to Your Honour's recollection my expressed opinion that the time allotted to the 14th August was not sufficient to express fully our views; also that the raiyats should be admitted to the conferences of the officials, and to the Legislative Council that the points under discussion might be brought down to as few as possible, to be submitted to the Legislative Council of India. In verification of the above, we quote from the report of

the Government of Bengal on the Bengal Tenancy Bill, 1884, pages 2008-2009, the opinion of the well-known Sadr Judge, Mr. Hawkins, who thus interpreted the Permanent Settlement "The contention of the petitioners is that of the three parties—the State, the zamíndárs and the cultivators; the first had, without consulting the other two, virtually plotted out the map of the country, that it then distributed the different portions to individuals comprising the second class, defined most accurately the respective liabilities to the State, and required them to respect any claim against them, such as might then exist, on the part of *any individuals* of the *third party*. Nothing was left open for legislation as to the substantial rights of subsequent cultivators." This is begging the question; apply this principle to the present intended new Tenancy Law, namely, that it has no power over "subsequent cultivators." This will at once bring a smile on the countenance of every official and non-official—eh? The law for murder passed only for the punishment of the murderers of the date of passing the law against murder: therefore all the murderers since punished have been unjustly so. It is self-evident to every right-thinking man that such a state of things could never have been contemplated by *any law*. The Law was passed for the future cultivation of the soil, even for *waste lands* (see Regulation XLIV of 1793); the law for assessing waste lands, which of course at that time could not have been under cultivation, and must have "subsequent cultivators," at *the same rates as for lands then under cultivation*, in fact supported by Regulation IV of 1794, section 7, and by No. 54. Resolutions passed for the Permanent Settlement, respecting receipts of rents, which are divided into three parts only, namely, khudkásht, paikásht, and khámár. This settles the question of non-enhancement of rates of rent of all land; not a word respecting these receipts not applying to future cultivators, more particularly as the zamíndárs wish to claim waste lands as khámár lands, whereas by Regulation VIII of 1793 the zamíndár is strictly enjoined by section 52 to let the whole of the remaining lands, must be to "subsequent cultivators." As the legislature of that day is silent on this point, it classed all "subsequent cultivators" as having the rights of the cultivators of 1793—not a word for giving receipts to raiyats holding only a right-of-occupancy, *meádee* pattás, tenants-at-will, &c., &c. We quote again page 2009: "This the Permanent Settlement of Bengal, whether good or bad, as a piece of fiscal policy, whether right or wrong as a political measure, was the result of mature deliberation, and to break it by round-about measures would obviously be worse from considerations of either kind" (Act X of 1859, &c., &c.). Then let the old form of receipt be restored with the penalty attached for non-fulfilment, "khudkásht, paikásht, and khámár," leaving not a section for raiyats with rights-of-occupancy only, meádee tenants, or for tenants-at-will.

Many object to the record-of-rights being made on the principle that it will make disturbances. The record-of-right must accord with the receipts that the zamíndárs, like any other tradesmen, are forced to give, declaring in the bill the number and qualities of the goods sold. The raiyats ask nothing out of the ordinary routine of business. Of course, if the above is listened to by the Government of India, the whole chapter on enhancement of rent should be struck out, and the remaining legislation considerably altered to meet the requirements of the older Regulations, which this Bill professes to restore by Regulations VIII of 1793 and VII of 1882. There has been a great deal of injudicious talk, such as the "village-communities have been broken up in Bengal since long before the Permanent Settlement," &c., &c. "Such claims must have been extinguished by the conquering power having laid hands upon them, and made them over to the landlords of their choice." The same thing *versus* the above (see the petition to England before 1784) may be said with respect to the English proprietary right (miscalled so) of the zamíndárs, who were made only landholders by Regulation I of 1793, and all their proprietary right extinguished by Regulation XVII of 1793. "You shall not distrain the land and houses of the raiyats, not even his plough, his plough-bullocks, nor his seed for next year's crops." This is important, as the present intention of the Bill is to sell all the rights of the raiyat instead of distraining his personal effects: to sell him up contrary to the provisions of the Permanent Settlement is manifestly unjust. On a cursory perusal of the various memoirs of the Government officials, their want of knowledge of the principles governing the Permanent Settlement Regulation, VII of 1822, is very apparent, as their opinions are given irrespective of the rights conferred on the raiyats by the above settlement. By Regulation VII of 1822, with each settlement there was record-of-right. Your Honour desires that there should be record-of-right made for the whole of Bengal. Many of the officials support the idea of the record-of-right, but the zamíndárs do not want the rights of the raiyats to be entered in the record, &c., &c.

Another error of Sadr Judge Hawkins, page 2009; "The engagements of the time, it may be repeated, were made in respect of land," &c., &c. No such thing: the lands are not divided into khudkásht resident, paikásht non-resident land, but the engagements are with the raiyat, if he resided in the village. Khudkásht resident raiyat, no matter what land he cultivated, the rates could not be altered; the same also with the paikásht non-resident raiyat, no matter what lands he cultivated; both were entitled to fixed rates, that is, no enhancement, of rates of rent. It is an error of the Courts to ask "what is the origin of the tenure?" It should be "what are the rights of this Bengali or raiyat?" Is he khudkásht or paikásht? The petition of the zamíndárs wish all to believe that their raiyats are all foreigners, and never lived in the village or any other village in Bengal.

We revert again to the Permanent Settlement. The officials by their memoranda would make us believe that the rates of rent were very carelessly settled. Even if they were, all that Regulation VIII of 1793 permits is a correction of the assessment not enhancement of rates of rent. For twelve years before the Permanent Settlement, the zamíndárs were yearly tenants-

at-will of their official status as zamíndárs (so all their proprietary claims must have been extinguished by the conquering power, page 2009) ; they had to collect all the revenue, and pay it into the treasury, every pice of it, and their accounts were rigidly scrutinised. The whole system was a very elaborate one of proportion (ratio) throughout; the lands were divided into aouel, doem, tertium, 1st, 2nd, 3rd, 4th quality for paddy land, the same for middle land, the same for *dhee* (high land), *purtee* or grazing land, and between each set of land the ratio or proportion (proper) was established ; so no matter what land a raiyat ploughed he was not under the burden of inequality when he sold his crop in the open market. Now, if a zamíndár, at the passing of Act X of 1859, or before, went to court and stated that the raiyat was not paying *the* prevailing rate, ten to one he was stating an untruth. Suppose him successful, and he has gained his suit, and broken the rate of any one class of land, say, the 2nd quality, then the ratio of this 2nd quality to all the other lands of the village is broken, and the equilibrium upset respecting other villages. No wonder former Moslem sovereigns never broke the standard assessment, but regulated the money they required by a percentage on the *asul* or standard assessment, so that the country was not demoralised as it is now by Act X of 1859. It is perfectly agreed to by Lord Cornwallis that the making of *abwábs* is a royal prerogative, and does not belong to the zamíndárs; so that if the above principle is carried out, the claim of the zamíndárs to enhancement of the rate of rent has been long ago extinguished by the conquering power. The rights of the zamíndárs are to be racked up, but the rights of the village-communities are not to be thought of, though only as late as 1793 (see No. 54, Permanent Settlement papers, up to that date) the villager had to pay the rents, not his own only, but the rents of those that ran away; so the assertion that the rights of village-communities of Bengal have been broken up in Bengal since long before the Permanent Settlement is a downright untruth. This is not evenhanded justice.

The zamíndárs by their spokesman, the Rájá of Darbhangá, page 1868, speak of the Permanent Settlement as the Magna Charta of the rights of the zamíndárs and raiyats in other words, one of the fundamental laws of this realm under the "Empress of India, Kaisir Hind," which it would be treason for any legislature to break. We raiyats of India, are quite willing that it should be so, and earnestly beg that Your Honour will institute a Court to try the rights of the zamíndárs and the rights of the raiyats by professional barristers on both sides If these points of non-enhancement and non-ejectment are not determined, it is useless to ask opinion of gentlemen, official and non-official, for the points of dispute not determined by such a course of action, and matters remain *in statu quo* unless it is determined to ignore *the Permanent Settlement and make fresh legislation.* If so, by Sadr Judge Ha[illegible], there were three parties to the Permanent Settlement—the State, the zamíndárs and the cultivators—and in the Bengal Tenancy Law the rights of the State are omitted. If is intended to give the zamíndárs anything above the 10 per cent. of the Permanent Settlement, then it is nothing but right that the portion belonging to the State should be increased in the same proportion. We refer to page 1722 by Mr. Finucane, respecting the village of Jaezpotee, being 500 per cent. above its original assessment. A zamíndár of Burdwan five times, of Dinájpur twice, a zamíndár of Darbhangá thirty-eight times the surplus over Government revenue, &c. &c. We may make a general average of all zamíndáris that their present rental is five times the amount that they pay to Government under the Permanent Settlement; in other words, their right to the rental is Rs. 100, but their present collections are Rs. 5,000, Rs. 4,000 of which they retain, instead of the above Rs. 100, and yet they say that they cannot collect their rents, and want a summary law of distraint; therefore, it is nothing but fair in the new order of things that the Government should have at least 50 to 75 per cent. of the collections of the zamíndárs. Then the Road Cess and Public Works Acts may be cancelled, for they press very hard upon the raiyats. If they cannot pay their present assessment, how can they possibly be expected to pay these new Government taxes? Your Honour is well aware that there are six or seven millions of raiyats so poor that they are unable to resist the zamíndár in any shape, and particularly the idea in the new Bill that if they do not agree to enhancement they will be summarily ejected. Let me recall to Your Honour's mind the history of Jonah, whom God sent to give warning to Nineveh. Most people are taken with the romantic portion of the story that Jonah remained in the whale's belly three days and three nights, but the moral does not lie there, but in the last verses of the 4th chapter of Jonah: verse 2nd—"For I knew that thou art a gracious God and merciful, slow to anger and of great kindness, and repenteth thee of the evil"; Verses 9, 10, 11—"And God said to Jonah, Doest thou well to be angry for the gourd? And he said: I do well to be angry even unto death. Then said the Lord: Thou hast had pity on the gourd, for the which thou has not laboured, neither madest it to grow, which came up in a night, and perished in a night; and should I not spare Nineveh (that repented), that great city, wherein are more than six score thousand persons that cannot discern between their right hand and their left hand and also much cattle?"

Dated 24th November 1884.

From—Babu Umesh Chundra Ghosh, Senior Pleader, Jessore,

To—The Secretary to the Government of India, Legislative Department.

I have the honour request the favour of your placing the accompanying memorial of the tenureholders of the Sadr Sub-division of Jessore in the hands of the members of the Legislative Council,

Memorial of Middle Tenure-holder of Sadr Sub-division of Jessore.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of middle tenureholders of the Sadr Sub-division of Jessore—

MOST HUMBLY SHEWETH—That the question of middle holding forms an important element in the land law of the country; but, unfortunately, this question has not received a fair share of consideration at the hands of the authorities.

That, owing to such an inadequancy of consideration and attention to this question, the just interests and rights of the class of tenureholders to which your memorialists belong have not been duly cared for in the Tenancy Bill pending before Your Excellency's Council.

That Your Excellency's memorialists therefore crave leave to approach Your Excellency with this humble memorial, briefly stating the points on which the Bill, both by commission and omission, would inflict injustice on Your Excellency's memorialists and others of the same class.

First of all, Your Excellency's memorialists will humbly say that the system of middle holding as it prevails in the country is in no way harmful, and has nothing in it to deserve discouragement. On the contrary, it is a beneficial institution and deserves encouragement.

By this system, small groups of tenants are placed under small landlords of moderate pretensions; whereas in the absence of it the tenants are subjected to the evils which result from their being placed under the charge of mercenary agents of big zamindars.

There is a touch of sympathy between the tenureholders and the raiyats under them, for mostly they are in personal contact with each other, and thus a sort of personal kindly relation springs up between them.

It is thus that the system of middle holding in this country is conducive to the good of the society, and, accordingly, with the instinctive support of the society, it has become a deep-rooted institution of the country.

The British Government in India, however, has unfortunately never shown any sympathy towards this good institution. But Your Excellency's memorialists submit that never before was such signal injustice intended to be inflicted on middle-holders as that contemplated by the present Tenancy Bill.

The existing law for protecting middlemen holders from undue exactions and arbitrary ejectments are to be found in section 51 of Regulation VIII of 1793 and sections 16 and 17 of Act VIII of 1869.

The Tenancy Bill would repeal sections 16 and 17 of Act VIII of 1869 (B. C.) as well as section 51 of Regulation VIII of 1793, reproducing them only in a very curtailed and restricted form.

Section 51 of Regulation VIII of 1793 is a general provision and is applicable to all middle tenures irrespective of the dates of their creation. It runs thus:—

"The following rules are prescribed to prevent undue exactions from the dependent taluqdars:—

"(1) No zamíndár or other actual proprietor of land shall demand an increase from the taluqdárs dependent on him, although he should himself be subject to the payment of an increase of jama to Government, except upon proof that he is entitled so to do either by the special custom of the district or by the conditions under which the taluqdár holds his tenure: or that the taluqdár by receiving abatements from his jama has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(2) If in any instance it be proved that a zamíndár or other actual proprietor of land exacts more from a talupdár than he has a right to, the Court shall adjudge him to pay a penalty of double the amount of such exaction, with all costs of suit to the party injured."

Thus, there is nothing in the above section to restrict its operation to tenures which have been held from the time of the Permanent Settlement, and to make it inapplicable to tenures which have been created subsequently to the Permanent Settlement.

The present Bill, however, would restrict the operation of it to tenures held from the time of the Permanent Settlement, as is seen in section 6 of the Bill, which is meant for a substitute for the above section of Regulation VIII of 1793. Section 6 of the present Bill runs thus:—

"6. (*1*) Where a tenure has been held from the time of the Permanent Settlement, its rent shall not be liable to enhancement except on proof—

"(*a*) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom, or by the conditions under which the tenure is held, or

"(*b*) that the tenure-holder, by receiving reductions of his rent, has subjected himself to the payment of the increase demanded, and that the lands are capable of affording it.

"(*2*) A reduction of rent granted to a tenureholder on account of diluvion or for land taken under the provisions of any enactment for the time being in force for the acquisition of land for public purposes or companies shall not be deemed a reduction within the meaning of this section."

Thus, the first line in the section, namely, the expression "where a tenure has been held from the time of the Permanent Settlement," is a new addition which narrows the meaning of the whole provision as compared with the provision of the Regulation. By this addition, the

Bill would leave wholly unprotected all tenures which came into existence after the Permanent Settlement. This alteration destroys the very essence of section 51 of Regulation VIII of 1793, and no reasons whatever have been given to justify this alteration.

Such a change, Your Excellency's memorialists humbly submit, would be a fatal blow to the rights and interests of the class to which Your Excellency's memorialists belong.

Then, again, there is no reason whatever why the Bill would repeal sections 16 and 17 of the present Rent Act and would reproduce them with two restrictions limiting their operation.

Sections 16 and 17 of the present Rent Act run as follows:—

Section XVI.—"No dependent taluqdár or other person possessing a permanent transferable interest in land intermediate between the proprietor of an estate and the raiyat, who, in any province to which the provisions of this Act may apply, holds his taluq or tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement, shall be liable to any enhancement of such rent, anything in Section LI Regulation VIII of 1793, or in any other law to the contrary, notwithstanding.

Section XVII.—"Whenever, in any suit under this Act, it shall be proved that the rent at which a taluq or other tenure is held in the said provinces has not been changed for a period of twenty years before the commencement of the suit, it shall be presumed that such taluq or other tenure has been held at that rent from the time of the Permanent Settlement, unless the contrary be shown, or it be proved that such rent was fixed at some later period."

The above two sections were the only provisions in favour of middle class holders in addition to section 51 of regulation VIII of 1793. Your Excellency's memorialists venture to say that to curtail them and to add conditions to them would be to destroy the little status the middlemen had, and this the Bill intends to do without any reason or without any complaint from any quarter against the said provisions.

The above two sections of the present law are reproduced in section 64 of the Bill, which runs as follows:—

"64. (*1*) Where a tenure-holder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the holding.

"(2) If it is proved in any suit or other proceeding under this Act that a tenureholder or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

"Provided that, if it is required by or under any enactment that in any local area tenancies or any classes of tenancies at fixed rents or rate of rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption small not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area which has not been so registered."

It will be seen the exception introduced in clause (1), that is, the words "except on the ground of an alteration in the area of the holding," is new. This exception would neutralise the effect of the section partially, and would unsettle the rents of old tenures and make them open to enhancement for the first time.

Again, the proviso te clause (*2*) threatens to undo entirely the presumption provided for by clause (*2*). This proviso is in fact a fatal blow to the rights and interests of your petitioners as a class.

Your Excellency's memorialists humbly submit that to make the alterations referred to would really be to destroy the vested rights of an important class of subjects.

The above are the complaints of your memorialists against the injustice which the new Bill would inflict on them by way of commission. Your Excellency's memorialists would, in the next place, mention some matters which constitute the defects of the present law as regards the rights of the middle holders. These defects your memorialists have good reason to ask Your Excellency to remove. The Bill by omitting to remove them would not be just to your memorialists.

One great defect of the present law with regard to tenure-holders is that, except in cases of tenures created by deed, unless a tenure be as old as the Permanent Settlement, at all events presumably as old, there is no express law to protect the holder of the tenure from ejectment.

If twelve years' holding by a raiyat adds to his rights, if a man holding land for twelve years by sheer wrong acquires absolute ownership, there is no reason whatever why a middleman who has been allowed to hold for twelve years without any express contract should not acquire some benefit.

The Courts have sometime felt the weight of the above reason. Accordingly, in some cases it has been decided that, where a middleman has held for twelve years as such, the zamíndár could not eject him. The case of *Ruttun Moni Davia* v. *Kamala Kanta Taluqdár*, reported in 12 W. R. 364, is in effect such a case.

Your Excellency's memorialists pray that a section be introduced in the present Bill providing that, where a tenure-holder has held for twelve years, he shall not be ejected from the holding so long as he pays a fair and equitable rent.

Then, as regards enhancement. For cases in which there is an absence of any contract or local custom to regulate the rent of a tenure, the legislature should provide an equitable and fair principle to regulate the enhancement of the rent. The present law does not provide any principle for such cases.

The present Bill has some provisions on the subject; but these are by no means adequate or fair and equitable. The Bill provides that the enhancement must be so as to leave to the middleman holder not less than ten per cent. of the nett proceeds. This is not just, nor does this amount to providing a principle of enhancement.

The above provisions of the Bill proceed on an assumption that the tenure-holders have no right to the land which they hold, that they are mere collectors of rent. Your Excellency's memorialists need hardly say that this is a grievously mistaken assumption. The tenure-holders have a right of property, and, as having such rights, they should be protected against excessive and rackrenting enhancement.

Your Excellency's memorialists pray that some equitable rule of enhancement be laid down. It would be an equitable principle of enhancement to lay down that the enhanced rent shall not bear a higher ratio to the nett proceeds for the time being than the old rent bore to the old net proceeds, and also to lay down that no claim of enhancement shall lie except on the ground that there has been an increase of the nett proceeds otherwise than at the expense and labour of the middleman holder.

Without such a provision, the law would lead to hardship both to middlemen and cultivators. For, without such a provision, the Courts will be left to act arbitrarily as at present, and, in consequence, middlemen will be rack-rented, and they, in their turn, will naturally try to recoup themselves by imposing arbitrary cesses and *abwabs*. They will not resort to legal steps to enhance the rents of raiyats under them. For they will not be able to avail themselves of the fruits of such legal enhancement. They will therefore be driven to impose cesses. Your Excellency's memorialists pray that Your Excellency will remove the reasons which might lead to such an unsatisfactory result.

Your memorialist would humbly further pray that Your Excellency would be pleased to appoint in the Legislative Council a member who might represent the interests of the middle tenure-holders. Zamíndárs and raiyats are well represented in the Council. It will be, therefore, an act of justice, your memorialists humbly submit, to take in a representative of the middle tenureholders.

Your Excellency's memorialists earnestly pray that Your Excellency will take your memorialists' representations in Your Excellency's favourable consideration, and will be pleased to do utice to their rights and interests.

Dated 5th December 1884.

From—Babu Rajkissore Mookerjea, *Utterparah*.

To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit herewith a memorial on the subject of the Bengal Tenancy Bill, numerously signed by Bengal raiyats and addressed to His Excellency the Viceroy, and I request the favour of your laying it before His Excellency. I also forward 70 spare copies of the memorial.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of the undersigned raiyats of Bengal.

Most Respectfully Sheweth,—That your memorialists beg leave to refer in their present memorial to only one of the provisions of the Bengal Tenancy Bill considering it to be of especial importance and not implying that they entirely approve of all the other provisions.

2. That your memorialists are anxious that with regard to the twenty years presumption in relation to tenure-holders and raiyats the existing law should continue unaltered and they crave leave to quote the following passage from the report of the Government of Bengal No. 1906 T--R, dated the 15th September 1884. "In the first place, then, the Lieutenant-Governor calls special attention to the enormous preponderence of evidence in favour of retaining the presumption as it now exists. The Patna, Burdwan Presidency, Dacca and Orissa Conferences are unanimously against any change. The Bhagulpore Conference (by a majority) and Mr. Lowis would allow a sufficient time for registration, and then annul the presumption. The Rajshahye Conference alone would give the raiyat two years in which to *sue* for the establishment of the presumption or forfeit his privilege—a proposition which the Lieutenant-Governor would absolutely reject as affecting a right which the ryots have enjoyed under the present law since 1859, and as tending to extreme litigation. Of the judicial officers, a very few would annul the presumption altogether, a larger proportion would modify it while a still greater number would retain it unchanged. Thus the Lieutenant-Governor feels himself fully justified in saying that the weight of authority is against any alteration."

3. That your memorialists notice with very great regret the recommendation of the Government of Bengal that the presumption aforesaid should run from 20 years before passing the Bill.

4. That your memorialists submit that if the recommendation aforesaid were carried into effect the principle of the presumption would be destroyed, for the burden of proof would in reality be shifted on to the shoulders of the raiyat. The Government of Bengal has rightly spoken of "the proverbial carelessness of most raiyats in preserving receipts" and the "ease with which Zemindars can refute the presumption if falsely raised." If in order to avail himself of the presumption the raiyat must prove twenty years' possession previously to the passing of the present Bill, in course of time his difficulty of offering the proof would be about as great as if he had to prove actual possession at a uniform rate from the Permanent Settlement. For instance, if the Bill were passed this year, a raiyat in order to avail himself thirty years hence of this presumption would require to be possessed of receipts as old as fifty years. As years go on the difficulty will be enhanced. It therefore, appears to your memorialists that in a very short time the presumption will be practically inoperative and the burden of proof which now rests on the Zemindar will be passed on to the raiyat. To modify the presumption in the way recommended by the Government of Bengal would be in effect to take it away. The difficulty of proof which the raiyat will experience will be cumulative; and practically there would be an absolute bar to his claim to hold as a fixed-rate tenant.

5. That your memorialists having considered the provisions of the Bengal Tenancy Bill with regard to record of rights feel bound to declare that those provisions afford no compensation to the raiyats for the loss inflicted on them by the taking away of the twenty years' presumption.

6. That your memorialists, while admitting the necessity of having a record of rights where the landlord or tenant desires it or where the preparation of such a record is calulated to settle an existing dispute or avert an impending one, are nevertheless convinced that a record of rights so far from giving to the raiyats a substantial advantage in substitution for the twenty years' presumption will produce injurious consequences. In support of this view your memorialists beg leave to quote the following passage from a Memorandum by Mr. H. J. S. Cotton, Officiating Commissioner, Chittagong, dated the 10th July 1884. "To introduce a settlement of rents and record of rights in Bengal generally will merely excite disputes and kindle litigation. The normal relation of landlord and tenant in these provinces is one of compromise; it is true that rights are unadjusted, the balance of rent is undetermined, the current demand of rent is not fixed, the area of cultivation is often unknown; it is for the convenience of both parties that the claims of either are not put to the test and yet it is not the case that the ordinary relations between landlord and tenant are unfriendly. * * * All that was elastic and unsettled will, under the new procedure, be stereotyped and fixed, and both parties will struggle with one another to the utmost in the civil courts in order that disputes may be decided which would never have arisen if the Surveyor's rod and Settlement Officer's registers had not galvanised them into life. It is difficult to over-estimate the bitterness of feeling which a survey and record of rights will thus provoke. The evil I think will outweigh any administrative advances derived from it. I venture also to think that most persons who are competent from their experience and knowledge of these provinces to form an opinion on the subject, will be found to agree with me in this deliberate conclusion that a survey and record of rights, if it is calculated to settle disputes where they already exist, is equally calculated, where they do not, to call them into existence."

7. That your memorialists submit that having regard to the history of land tenures in Bengal it would appear that the provisions of Act X of 1859 which led down the twenty years' presumption did not merely declare a rule of the law of evidence, either arbitrarily or only upon considerations of convenience, but sought to put a bar to enhancement wherever rent had been paid at a uniform rate for twenty years. Para. 225 of Mr. Shore's Minute of June 1789 published as Appendix I to the Fifth Report says: "There are two other distinctions of importance also, with respect to the right of the raiyats. Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure be considered as hereditary tenants, and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and having only a temporary accidental interest in the soil which they cultivate will not submit to the payment of so large a rent as the preceding class, and when oppressed, easily abandon the land to which they have no attachment." It appears from the above that the maximum rents were paid by the tenants who had a "length of occupancy." Tenants who had held for a long time at a uniform rate could not have their rents enhanced, for they already paid the "highest rents." The legislators of 1859 made the requisite "length of occupancy" definite by fixing it at twenty years; and the presumption was intended to declare the immunity of raiyats who had enjoyed this "length of occupancy" from enhancement. If the presumption was irrebuttable the immunity would have been absolute; but in so far as it was left open to the zamindar to rebut it, it was only a partial protection that the raiyat obtained. A sort of compromise was thus effected. For the liability to enhancement newly imposed on the raiyat the only compensation or consolation that was given to him was that occupancy for

twenty years at a uniform rate would make it as difficult as possible for the zamindar to get an enhancement. To take away the benefit of the presumption now would be to deprive the raiyat of one of the very few safeguards which he enjoys against arbitrary enhancement.

8. That your memorialists, therefore, pray as follows: that the twenty years' presumption in relation both to tenure-holders and raiyats may be retained as it exists under the present law.

And your memorialists as in duty bound shall ever pray.

No. 2002—1038L. R., dated 4th December, 1884.

From—A. P. MACDONNEL, Esq., Secretary to Government, Bengal,

To—The Secretary to Government of India, Legislative Department.

In continuation of my letter No. 1906T.R. of the 15th September, I am desired by the Lieutenant-Governor to forward the accompanying statements, supplied by the Registrar General of Assurances, of the extent to which leases and mortgages of land held on occupancy-titles have been registered in the various registration-offices of the province of Behar.

STATEMENT No. I.

Return of Leases of Land held under Occupancy Titles registered in the following nine districts of Behar during the years 1881—83.

Number.	District.	1881.		1882.		1883.		Total.	
		Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).	Number of leases registered.	Area leased (standard bighas of 14,400 sq. feet).
1	2	3	4	5	6	7	8	9	10
1	Chumparun	1,860	75,981·9	1,888	1,60,986·5	1,797	71,254·7	5,545	3,08,223·1
2	Mozufferpore	494	3,572·5	848	5,075·5	1,087	7,740·2	2,493	16,388·2
3	Durbhanga	351	3,686·1	366	3,986·1	421	3,291·6	1,138	10,963·8
4	Sarun	46	684·8	75	953·1	147	1,115·8	268	2,753·7
5	Gya	58	1,714	37	460·2	52	521·4	147	2,695·6
6	Patna	69	562·1	47	605·3	72	604·4	188	1,771·8
7	Shahabad	...	...	..	...	...	...	...	...
8	Monghyr	85	1,201	105	1,565	67	705	257	3,471
9	Bhagalpore	...	...	...	...	..	...	...	...
	TOTAL	2,963	87,402·4	3,376	1,73,631·7	3,643	85,233·1	9,982	3,46,267·1

This Statement No. I includes *zerpeshi* leases.

STATEMENT No. II.

Return of Mortgages of Land held under Occupancy Titles registered in the following nine districts of Behar during the years 1881—1883.

Number.	District.	1881.		1882.		1883.		Total.	
		Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered.	Area mortgaged (standard bighas of 14,400 sq. feet).	Number of mortgages registered	Area mortgaged (standard bighas of 14,400 sq. feet).
1	2	3	4	5	6	7	8	9	10
1	Chumparun	441	14,635·5	558	16,372·6	702	17,202·8	1,701	48,210·9
2	Mozufferpore	368	3,137·3	499	3,526·5	720	5,179·6	1,587	11,843·4
3	Durbhanga	261	3,113·9	200	2,577·7	295	3,883·3	756	9,574·9
4	Sarun	983	4,230·7	1,547	6,414·8	1,619	6,918·1	4,149	17,563·6
5	Gya	71	1,125·3	80	1,761·1	94	2,034·3	245	4,920·7
6	Patna	217	2,226	178	2,195·3	188	2,028·7	583	6,450
7	Shahabad	81	1,264·9	71	9,10·4	146	1,859·3	298	4,034·6
8	Monghyr	397	7,251	483	7,201	523	9,421	1,403	23,873
9	Bhagalpore	121	3,047·1	115	3,061·7	159	3,535·8	395	9,644·6
	TOTAL	2,940	40,031·7	3,731	44,021·1	4,446	52,062·9	11,117	1,36,115·7

No. 2013—1041 L.R., dated 4th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government of Bengal,
To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit, for the consideration of the Government of India, the accompanying papers noted on the margin, containing the opinions of certain officers on a pamphlet by Bábú Mohiny Mohun Roy on the procedure sections of the Bengal Tenancy Bill.

Demi-official letter from Mr. J. Tweedie, dated 10th November 1884.
Letter No. 1116, dated 13th November 1884, from District Judge of Furreedpore.
" No. 1445, dated 20th November 1884, from Judicial Commissioner of Chota Nagpore.
" dated 21st November 1884, from 2nd Sub-Judge, Tipperah.
" No. 481, dated 21st November 1884, from District Judge of Sarun.
" dated 22nd November 1884, from Munsif of Serájgunge.
" No. 34, dated 22nd November 1884, from Sub-Judge of Burdwan.
" No. 9, dated 24th November 1884, from Sub-Judge of Backergunge.
" No. 75, dated 24th November 1884, from 1st Munsif of Sudharam.

Dated Arrah, the 10th November, 1884.

Demi-official from—J. TWEEDIE, Esq., District and Sessions Judge,
To—The Secy. to the Government of Bengal, Revenue Dept.

I have to acknowledge receipt of your demi-official note dated Darjeeling, the 21st of October, and of the pamphlet therewith sent. As requested in the note, I have to make the following remarks on the pamphlet.

As far as the author has reached in the two parts of his subject as yet treated of by him, he deals first with procedure connected with under-tenures—of which the "putni" may be taken as the principal and the type—and then with suits and sales in ordinary rent suits.

As regards the former, the main proposals are, first, that they should be registered by the court of the Subordinate Judge; and that thereafter—proceedings for arrears of rent shall be taken by an "application" for their realization, being treated as a "declaratoy decree" that they are due—all objections being heard finally by the court which executes, in the same way as courts now deal with objections in ordinary execution cases. The great advantage claimed for this procedure is that it will absolutely exclude any subsequent civil suit to set aside the sale.

I think that to make "registration" the work of judicial officers is a new suggestion which cannot be entertained unless Government is prepared to grant a large increase to our civil staff. Whatever may have been the case some years ago, it is not the case now that Collectors are overburdened with work. The press of work at the present day is on the judicial branch of the Administration. It would therefore be desirable, in order to avoid cause for increased expense on the civil side, to have "permanent tenures" registered, if they are to be registered, by the collectorate agency, with power to it to make a reference to the Civil Court as in registrations under Bengal Act VII of 1876.

As to the necessity of registering these tenures, I admit that I do not see it. I am a strong advocate for registration: but of all things which can be registered, I think these tenures least of all require registration, and that for the sufficient reason that no dispute, as a rule, ever arises as to their existence, extent, or the terms on which they are held.

Next as regards the state of things under the present (or proposed new draft) law; *vide* pages 6, &c., of the pamphlet. There we will find it said that Regulation VIII of 1819 "has worked very successfully." Why then disturb it? Again, we are told that the existing procedure by suit and decree results in this, that "in nine cases out of ten the amount of the decree is paid up" (page 7). What better result than this can be looked for from any procedure?

"In a few instances sale takes place, and then a proceeding or suit for setting it aside invariably follows. Take it that this is the "invariable" result. It is for these "few instances" that the new procedure has been elaborated, the author being forgetful of the risk of bringing into dispute the nine-tenths regarding which he has told us that the present law works satisfactorily, and that disputes are settled by the amount being paid out of court.

My own experience is not in accordance with that of the author of the pamphet, where, at the end of the first paragraph on page 7 and elsewhere, he says that a large amount of litigation springs from attempts to upset sales of permanent tenures. This litigation does occur; but it forms an infinitesimal part of the general body of litigation with which courts have to deal. The "one-tenth," therefore, of cases not settled without further litigation is not only a small fraction, but a small integer.

Then as to the chief aim and object of the author's suggestions, namely (as I take it) "*to leave no room or pretext for a future regular suit*" (page 8, line 17). This, I think, must fail under any principle hitherto recognised by the courts. And indeed the author of the pamphlet has himself seen this; for he provides (page 19) that while a sale once confirmed shall never be challenged, "*nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord, on proof of fraud, in a civil suit, or against any other person party to such fraud.*" Now the only equitable relief applicable to such a case is the recovery of the "permanent tenure" fraududently filched; so the sale under the circumstances put must be set aside, or our ancient equity must be suspended in favour of

fraudulent landlords of permanent tenures. Suppose this matter were put as a substantive provision instead of as an "exception"—the mode adopted by the author of the pamphlet—it would run thus:—"If the lessor of a permanent tenure can, by following the procedure hereinbefore laid down, manage by fraud on his part alone, or with the aid of accomplices, to bring any sale of an under-tenure to completion by the said sale being confirmed, the defrauded lessee of the said under-tenure shall, under no circumstances, recover the property out of which he has been cheated; but he may get, by civil suit, equitable relief or damages from the fraudulent lessor, or his accomplices or both."

This crude but correct form of the proposal of the pamphlet is, I submit, sufficient for the condemnation of the scheme as propounded, and I shall not trouble to criticise details.

I come now to the second part of the pamphlet. Two objections here stare us in the face, bearing on matters of principle; so that again I need not go into details.

The first is that the scheme is limited to one exceptional case, while a general law should apply to general cases. The exceptional case provided for is, when we have got a decree between A and B not more than ten years old (page 29, line 9), in which the "amount of annual rent and instalments" (page 28, line 12) have been determined. The second objection is that the procedure suggested, when we have got such a decree, is so similar to that already practically in vogue, as to be without advantage; while it has the unquestionable disadvantage of jumping at the conclusion that there is, and can be, no defence to the second or other subsequent suit—a conclusion which must be resiled from if the defendant appear. The court is also committed by this procedure to a false position if it proceeds to execute (page 29, line 26) before it knows whether or not a defence will be made. The procedure violates the universal maxim, which recommends *audi alteram partem before* taking adverse action against it.

Present procedure requires summons to issue on representation of plaint; if defence be raised, the matter is tried; if, as in 999 out of 1,000 such cases as the author would provide for, no defence is made, *ex parte* decree is obtained and execution issues on the basis thereof. All this it simple, natural, rapid and fair to all sides. It is far more simple than that proposed, which is as follows:—Show your previous decree: say that such and such a fresh sum is due: get an execution proceeding on your so saying, which, however, shall not be executed unless the court specially direct. But it may so direct, and then the court has an attachment on its hands before it knows what is to become of the case. For after all, our "execution proceeding" (page 28, line 17) is only a summons to "*show cause why the amount claimed in the petition should not be levied*" (page 29, line 24). So we get back to our present procedure: for if the party appears, the matter has to be tried: if he does not appear, an *exparte* decree or 'order absolute' is made in favour of the petitioner.

I can see no advantage in disturbing the ordinary and well known practice of the courts by innovations such as those suggested, which are absolutely devoid of advantage to any one.

On two points of detail I must also comment—First, my experience is quite the reverse of that of the author of the pamphlet where he says that the question of payment of rent rarely is in issue (page 27-3). I have elsewhere said, and adhere to the opinion, that a very large part of our rent litigation would cease if unquestionable proof of payment were granted by the payees and were preserved by the payers as the only mode of proof admitted by the court in support of an allegation of payment. Secondly, paragraph 1, page 28, makes it incumbent on the courts "*in every suit for rent*" to "find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable." But every lawyer knows that at the present time courts try all necessary issues, and will try those above prescribed whenever they are necessary to the decision of any case under trial. To enact that courts shall try them, whether thus necessary or not, is again to diverge from our recognised judicial policy and practice, and therefore the proposal cannot be approved.

The terms of the demi-official letter under reply do not seem to invite an opinion on the remarks which begin under the words "judicial procedure" on page 30 of the pamphlet. I therefore say little about them, especially as I have had another opportunity of fully stating my views on the draft Rent Bill. Generally, I hold that the right of numerous appeals in rent-suit matters should be curtailed; and I would object to making a new ground of appeal out of the fact that a "decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is paid" (page 31); and I think that the powers of supervision given to the Judge by section 160 of the draft Bill likely to be most salutary.

It is simply impossible to make "*all rent-suits*," &c., "cognizable by the court of the Subordinate Judge" as a court of first instance, unless such a revision is made among Subordinate Judges, District Judges and High Court Judges as would cost lakhs of rupees for every little benefit. For one Subordinate Judge could not hear an appeal from another Subordinate Judge; all cases up to Rs. 5,000 would fall on that already far more than overburdened labourer, the District Judge, to be disposed of on appeal. The work of the High Court would also naturally be increased by bringing the first court of original instance one degree nearer to it. The proposal, I think, is not likely to be entertained; so I merely further remark on it that, as a rule, litigants do not look for courts in which they have confidence. Many litigants would prefer to have courts in which "confidence" ought not to be placed, as might be shown from some passages of the pamphlet under consideration.

Payment by instalments (page 34) should always be allowed in the discretion of the courts.

I think local enquiries under the direction of the executive more likely to yield true results, and to be free from corrupt influence, than similar enquiries held even by an improved class of amins.

I need say nothing regarding "sales for arrears under decree," as the procedure advocated by me has been freely set forth in the draft "procedure" part of my general report on the proposed new legislation; and I adhere to what I have there expressed at length.

No. 1116, dated Furreedpore, the 13th November, 1884.

From—H. BEVERIDGE, Esq. District Judge, Furreedpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to submit the report called for by your letter No. 2428R of 23rd October last.

2. In my opinion the views and proposals of Baboo Mohini Mohun Ray for altering the procedure of the Bengal Tenancy Bill are not of much value and ought not to be adopted. They appear to me to be the suggestions of a man who has practical ability, but who is not capable of taking a comprehensive view of a subject. He also labours under the difficulty of writing in a language with which he is imperfectly familiar. The Baboo begins his remarks by saying that it does not pay to sue raiyats, and he says that there is not much execution decrees in such cases. Then he adds the observation that in a great many of such cases the raiyats make peace with their landlords after judgment and amicably pay rents. But it is clear that, if this statement is correct, a large proportion of suits are successful. The suits compel the raiyats to settle, and thus, the landlord gains the object for which he went into court. The writer seems to have forgotten the large proportion of cases amicably settled, when he remarked lower down that, if there were no ulterior objects to serve, a landlord would find it cheaper to forego his rents. He goes on to say that it pays to sue tenure-holders. Now if this is so, it seems to me that his whole case falls. If such suits pay, to use his words, that is, if such suits are successful, then the law must be working well, and there can be no need for altering it. The writer goes on to make two statements, both of which are opposed to my experience. The first is that the amount of the decree is rarely paid up till the issue of the sale proclamation; and the other is that, under ordinary conditions, the number of suits against tenure-holders is quite equal to that of suits against raiyats. My experience is that suits against tenure holders form a very small part of our rent cases, and that in many of them the rent is paid as soon as decree has been passed. I believe that many talukdars and other tenure-holders do not pay their rents because they like to put their zemindar to trouble; others don't pay out of a foolish feeling of pride; they think it beneath them to have dealings with their superior landlord or to acknowledge him in any way. They therefore wait till they are sued, and then pay as soon as process is taken out. They get an unimpeachable receipt in this way, and they do not greatly regard the extra cost of paying in such a manner. The bad feeling which prevents a tenure-holder from paying his rent is specially common among shareholders. The co-partners in a zemindari generally hold tenures in each others share, and being commonly on bad terms with one another, they wont pay until they are compelled. No legislation will put an end to suits which are the result of the perversity of debtors; they will go on as long as human nature is what it is.

3. The remedy proposed by Baboo Mohini Mohan is to have tenures registered. His scheme is given at page 21 of his pamphlet. Registration is to be optional, and application may be made by the landlord or by the tenure-holder. I can understand why the landlord should wish to register, but I do not see what the tenure-holder will gain by doing so, and I should think that he would be very unwilling to make his tenure subject to a new and very stringent sale law. It seems therefore that the only applications will be by the landlord. The writer further anticipates that by registrations being left optional there will not be many contentious cases. If this anticipation be realised, then there will not be registration in the cases in which it would be most useful. If there is only to be registration in friendly cases, the scheme will not be of much use. When there is contention, the investigation will often be long and troublesome, and will take up a great deal of the Subordinate Judge's time.

4. I do not see any advantage in making all suits against tenure-holders triable in the Subordinate Judge's Court. There are no Subordinate Judges at sub-divisions, and the parties will be put to needless trouble and expense by having to come into the sudder station. Many tenure-holders are poor, and the annual rents are often small; neither is there anything specially difficult about the rents of tenures. The proposal therefore will be unpopular, and will be expensive to Government from its unnecessarily taking up the time of their superior officers.

5. I do not see that registration will be effectual to prevent litigation. The mere fact of registration will be no guarantee of the truth of claim, and it would be monstrous to allow it to be followed by a summary procedure of sale. I must repeat that the proposed legislation seems useless, for the writer admits that the present law works fairly well. I beg to add

that, to use a phrase of Mr. Gladstone in speaking of the Franchise Bill, the Tenancy Bill has already as much weight as it can carry, and that, even granting that Baboo Mohini Mohan's scheme is a good one in itself, it would be wise to let it alone for the present. The thing to be done is to carry through a Bill which will relieve the tension now existing between landlords and raiyats, and to let alone everything not necessary for this purpose. Holding the view that it is inexpedient to complicate the rent question by adding provisions about the registration of tenures, it is perhaps not necessary for me to examine minutely the details of the learned pleader's proposal. I shall therefore only offer a few remarks. The procedure for sale is given at page 13. The draft speaks of months, and it is evident that the Baboo is thinking of Bengali months; but unless some express provision is made in the proposed Act, the courts would, I believe, certainly construe the word to mean months according to the British Calendar. They have already done so under the present Rent Act. I do not suppose that the Bengali months and sale days would suit in Behar and Orissa. The tenure-holder is to be allowed to contest the demand; but the sale is not to be stopped on that account unless the amount of the demand is deposited This provision is fully as objectionable and harsh as the proposal disapproved by the High Court, that no appeal by a raiyat be allowed unless the amount of the decree be deposited.

6. In section 11 it is proposed that the tenure-holder should not be allowed to bid at the sale. This seems to me to be unfair. If the tenure-holder is not to be allowed to contest the demand unless he pays up the arrear, he should at least be permitted to do all else that he can to save his property, and one of these means is to bid and buy in the tenure. Section 13 proposes to do away with the question of notice, but however unsatisfactory questions of the service of notice are sometimes, it would still be most dangerous and unfair to enact that a judgment-debtor should not be allowed to allege want of notice. At page 22 there is a note saying that pergunnah divisions are the best known divisions. This is not correct; and moreover the author has apparently forgotten that such divisions do not agree with judicial divisions, and that consequently it will often happen that the Subordinate Judge's jurisdiction for ordinary purposes will differ from that for the work of registration.

7. I now come to Part II of the pamphlet. Here the writer is on firmer ground, and his remarks are more valuable; still it strikes one that he does not know so much about petty rent-suits. One of his first observations is that the question of payment is comparatively unimportant and is not difficult to try. No one would make a remark like this who had seen many petty rent-suits tried. Disputed receipts are of every day occurrence in Munsifs' Courts, and it is often extremely difficult to determine if they are genuine or forged. Questions about instalments are, according to my experience, of very inferior importance. Another strange remark is that the question of the court-fee is not of much importance in suits against raiyats. It may not be much to the zemindar, though I believe that they complain bitterly about it; but it certainly matters a good deal to the raiyat whon he is cast and has to pay the cost of the stamp in addition to the amount of the rent. It would seem, too, that Baboo Mohini Mohun really thinks the question of the stamp to be important, for his scheme is little more than the substitution of a petition for a stamped plaint. According to my experience, successive suits against the same raiyat for the rent of his holding are not very common. When a raiyat cannot pay, and a decree is obtained against him, he is often ejected, and then of course there are no more suits against him; but when such cases do occur, the process is generally summary. The landlord files a copy of the old decree, and a decree follows almost as a matter of course, and with very little taking of evidence I don't think any more summary procedure would be safe. I am not aware that the zemindars have asked for the remedy suggested in the pamphlet, and if they have not, it is pretty good evidence that it is not required. The writer's remarks about the latter part of section 168 seem correct, and I also agree with him in striking out sub-section (*e*). This is an alteration which has, I believe, been already decided on. I do not think that sub-section (*b*) should be struck out. I think that he is right in objecting to the employment of revenue officers in local enquiries, but I would allow the courts to employ pleaders and other competent persons, and not restrict them to employing Civil Court ameens.

8. The remainder of the pamphlet does not, I think, call for much notice. It consists of a proposal to extend the writer's scheme for the sale of permanent tenures to all sales of holdings, and of suggestions, for doing away with the provisions for protecting registered and notified incumbrances, as an essential part of the special procedure is the registration of the tenures in the court of the Subordinate Judge. I do not see how it is to be applied to unregistered tenures, nor does the writer explain this. He thinks that quarterly sales will be better than monthly ones. I do not think that landlords would agree with him about this, and there would be this evil, that the sales would go on for about a fortnight. All the sales of the courts at a station are conducted by one man, for the old system of having a nazir for each court has been done away with. A monthly sale now lasts at many stations for three or four days, and even longer. If they be made quarterly, the nazir will have three times more property to sell, and will take a correspondingly longer time to get through the work. The result will be that all his other work will fall into confusion. Pages 36 to 42 of the pamphlet are mostly taken up with quotations from the Bill. If the

sections had only been referred to, and not quoted at length, there would have been a considerable saving of space. The writer objects to the protection of registered and notified incumbrances, but I think he does so without good reason. The proposals in the Bill seem to have been carefully considered and to be perfectly fair and workable.

9. When this report had been partly written, I received your letter No. 1664—910 and I proceed to reply to it. For the reasons given above, I think that the procedure proposed would be unfair to the defendant, and I also doubt if it would materially shorten litigation.

10. As regards my making any suggestion of my own for the simplification of procedure, I must plead my incompetence to add any thing of importance to the rules laid down in the Bill. The great difficulty is about the proof of the service of summons. The Bill proposes apparently to remove this difficulty by allowing the courts to substitute a registered letter for the summons. This will no doubt remove all difficulty if proof that the latter was posted and registered be accepted as proof of service. But the courts are not directed to accept such evidence as sufficient, and I doubt if they would do so of their own motion. It would not be safe to do so. Few raiyats can read and write, and those who could, would in all probability refuse to accept the letter, or to give a receipt for it. The difficulty of serving processes, and of proving the service, is specially felt when the defendant lives out of the jurisdiction. If he lives in another district, or even in another munsifi, the process is served through another court, and the plaintiff has to send his man to point the defendant out. If this man does not appear, or even if he is a little late in coming, the process is returned without any attempt being made to serve it. This is a great hardship, and at least the plaintiff ought to get his process fee back, or be allowed a fresh process without payment. The piada not having gone into the mofussil, there has been no expense to Government, and consequently the fee, or at least a part of it, should be returned. But I do not see why the courts should not try to serve the summons even in the absence of the plaintiff's man. In many cases the defendant is a well-known man, and the piada could find him out with the greatest ease. A postman does not refuse to deliver a letter because no one is present on behalf of the writer to point out the addressee. Piadas, if kept at one court, get to know the people of the neighbourhood just as postmen do, and advantage should be taken of their local knowledge. If an Uriya bearer in the service of a member of a Council, or some other well-known Calcutta resident, owes two rupees of rent, it seems absurd that his landlord down in Orissa must send a man all the way from there to identify him, under penalty of having the summons returned unserved. If, however, it be said that we must have general rules, and that we cannot meet special cases of hardship, then I beg to suggest that the despatch of a registered letter be declared *primâ facie* evidence of the service of summons and other processes when the defendant lives out of the jurisdiction, or more than 50 miles from the court. I think that some such concession as this could be made *ex necessitate rei*; but at the same time I would allow the defendant to re-open all such cases on his depositing the amount of the rent and costs. I do not think this would be unfair to the defendant, for by sending a registered letter the plaintiff has shown a *bonâ fide* intention of serving the process. I would also enact that in all cases where a defendant was found to have received the process, and to have falsely denied having received it, he should pay 25 per cent. to plaintiff in addition to the amount of the decree and the interest thereon. I may point out that the substitution of registered letters for precesses served by piadas will in many districts be a saving to Government. The High Court has ordered that the boat hire of process-servers is to be paid by the courts, and it has been found in this district that the 25 per cent. added to the cost of the processes is very far from recouping Government for the cost of the boat hire. But, of course, in order to get the full benefit of the saving, it would be necessary to substitute registered letters wherever service could only be made by boat. I am inclined to think that it would be well to pass such an order. It seems absurd to employ 50 boats and two or 300 men to serve the processes of a court for a month, when 2 or 3 dâk-boats would do the work as effectually. It might be occasionally useful to serve summons by telegram, and I would therefore add to clause *d* the provision that a telegram may, if the court directs, be substituted for any other mode of service. Of course, if the above suggestion is good for rent-suits, it should be equally so for other classes of suits. Munsifs often complain of the difficulty in disposing with despatch of Small Cause Court suits owing to the delays in serving processes out of the jurisdiction. The only other alteration which I would propose to make in the Bill is the removal of section 219. I do not see any good reason why a minor landlord should not have the benefit of section 7 of the Limitation Act. He has it, I believe, under the present law. With reference also to schedule 4, Part III of the Bill, I beg leave to call attention to the decision in Mamtazul Huq's case, I. L. R. 9 Cal. 711. The effect of this decision is to override the provisions of section 210 of the Civil Procedure Code about payment by instalments. The section is a very useful one to debtors, and the decision I have referred to will compel landlords to be harder to their tenants than they would be if the special limitation law were less rigorous. It is not an uncommon practice in zemindary management to evade the three years' limitation by taking bonds from their tenants for the rent due by them when the time for suing for rent has nearly expired. There can be no doubt that the stringency of our limitation law is answerable for a good deal of the litigation for which Bengalis are blamed.

11. In my humble opinion, the difficulty in collecting rents through the courts is not mainly caused by defects of procedure; it is the Court Fees' Act which is to blame, and there is also a great want of Munsifs. If sufficient courts are given, and the establishments are sufficient in number and are properly paid, rents can be collected with comparative ease and rapidity even under the present law.

No. 1445, dated Ranchi, the 20th November, 1884.

From—G. E. PORTER, Esq., Judicial Commissioner of Chota Nagpore,

To—The Secretary to the Government of Bengal, Revenue Department.

I have the honour to acknowledge receipt of your letters marginally noted, forwarding copy of a pamphlet on the procedure sections of the Bengal Tenancy Bill by Baboo Mohini Mohun Roy, and asking for my opinion thereon.

No. 2427T—R, dated 23rd October 1884.
No. 1663—909LR, dated 4th November 1884.

2. I have read the pamphlet carefully, and am of opinion that the proposals made are well considered, and will do much to simplify the procedure in rent cases. I think the change proposed in section XIII, which is an important one, will tend to prevent litigation.

3. The only doubt I have is whether the Subordinate Judges' courts will be able to dispose of all the cases that may arise under the new Rent Law. Provisions should be made for the trial of such cases in Moonsifs' courts also.

4. With reference to the part II of the pamphlet, I am of opinion (*a*) that the procedure suggested would not operate unfairly towards the defendant in the suit, and (*b*) that it would materially shorten and cheapen litigation.

5. I have no modifications to suggest in the proposed procedure, except the one indicated in paragraph 3 of this letter. If Subordinate Judges are able to cope with the work, it would of course be better that the cases should be tried and decided by them; but this appears to me hardly possible, as in sub-divisions and outlying parts of districts there are no Subordinate Judges, and it would be hard on litigants to expect them to institute all their rent-suits at head-quarters.

Dated Comillah, the 21st November, 1884.

From—BABU AUGHORE NATH GHOSE, 2nd Subordinate Judge, Tipperah,

To—The Secretary to the Government of Bengal, Revenue Department.

In obedience to your letter No. 2432T—R, dated the 23rd ultimo, and No. 1668—914LR, dated the 4th instant, I have the honour to report as follows.

2. Leaving aside the financial aspect of the question, and subject to the following amendments and objections, I approve of the "draft of an especial procedure for the sale of permanent tenures for arrears accruing thereupon," including "rules for the registration of tenures," made by Babu Mohini Mohun Roy.

(*a*) *Section IV of the draft.*—The following may be added to this section:—"The notices should be published by beat of drum, and a copy of the notice may, if the court so directs, be sent to the tenure-holder or (if there be more than one tenure-holder, to all or any of them by post in a letter registered under Part III of the Indian Post Office Act, 1866. And if the court so directs, the notice may be published in some official Gazette or local or other newspaper."

(*b*) *Section XIV of the draft.*—To the three exceptions specified in this section, the following may be added:—

(*d*)—Any under-tenure existing from the time of the permanent settlement.

(*e*)—Any under-tenure recognized by the settlement proceedings of any current temporary settlement as a tenure, at a rent fixed for the period of that settlement.

(*f*)—Any lease of land whereon dwelling-houses, manufactories, or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made.

(*c*) *Section XVI of the draft.*—The draft makes no provision for the disposal of the sale proceeds in ordinary cases. Section 186 of the Bill may, with necessary modifications, be made applicable to the disposal of such proceeds.

(*d*) *Sections XIX and XXII of the draft.*—I agree with Babu Mohini Mohun Roy in observing that "the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures." And I am of opinion that the provisions for the registration of leases and counterpart leases should be omitted. The registration of leases and counterpart leases is likely to add greatly to the work of the Subordinate Judge, to the detriment of other and more important work with which he is entrusted.

PART II.

3. I cannot approve of the suggestion that when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, the tenant may be proceeded against by application, as in an execution proceeding for subsequent rents accruing upon the same tenure.

Addition and subtraction of lands, increase and decrease of the rental, transfers of holdings or tenures by operation of law or act of parties, are likely to make the plan suggested of not much practical utility. When the question of the amount of rental or of instalment is a *res judicata*, the suit, I believe, does not prove very troublesome to the court or expensive to the suitors. I think it is not necessary to lay down any special or extraordinary procedure for such suits. The decrease in most of such cases may be executed at once on the oral application of the decree-holder under section 256 of the Civil Procedure Code. The introduction of this section into the Bill, with a little addition, will enable holders of rent decrees to have their decrees executed without any delay. And as most of these decrees will be final under section 168 of the Bill, no inconvenience will, in the majority of such cases, arise in taking out immediate execution.

CHAPTER XIV OF THE REVISED BILL.

4. *Section 160 of the Bill.*—I cannot agree with Baboo Mohini Mohun Roy in suggesting that "all rent-suits and applications under the Rent Act" may be made cognizable by the court of the Subordinate Judge. I believe there are many districts in which there are villages more than 50 or 40 miles distant from the Subordinate Judge's court. It would be very hard on suitors, especially poor suitors, to be compelled to carry on original suits at any season at a place so far off from their homes and the homes of their witnesses, although it may not be so very difficult for a zemindar or the holder of a permanent tenure to carry on litigation connected with the registration or sale of such a tenure at such a distance.

5. *Section 168 of the Bill.*—I agree with Baboo Mohini Mohun Roy in suggesting that the following clause may be added to the exceptions to the rule contained in this section, so far as relates to the courts of original jurisdiction:—"Or unless the decree or order has decided a question of the amount of annual rent payable by the tenant, or of the instalment in which it is payable." I may quote here what I stated in my last report regarding this section. It is as follows:—This section may be retained with the addition of the following to paragraph IV:—

or a question of the amount of rental payable by the tenant. Sometimes the question of the amount of rental payable by a tenant is as important as a question of a right to enhance or vary the rent. It may not be necessary to retain the proposed addition after the expiry of four or five years after the passing of the Bill, and the consequent operation of the sections regarding receipts (sections 70 and 71); but until that time the proposed addition is urgently required." For the reason stated in the preceding paragraph, and having regard to the other important duties of the Subordinate Judge, it would not be desirable to make him try small rent-suits. This section may be so framed as to make his judgment, passed on appeal, final, when the amount claimed in the original suit does not exceed Rs. 100, notwithstanding that his judgment "has decided a question of the amount of annual rent payable by the tenant, or of the instalments in which it is payable;" but it should not be made final if it has decided a question relating to title to land or some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant. The adoption of the proposal to make the judgment of the Subordinate Judge final in all cases of the value of Rs. 100 and under, excepting those referred to in paragraph 4 of section 168 would be simply extending the authority which the District Judge already has under the existing law [section 102 of Act VIII (B. C.) of 1869] to the Subordinate Judge.

6. *Section 163 of the Bill.*—I agree with Babu Mohini Mohun Roy in submitting that sub-sections (*b*) and (*c*) of this section are objectionable. I beg to quote here what I stated in my last report regarding this section:—"It would be better to give the defendant the option of putting in a written statement. It would not always be easy for a Moonsif in a heavy chowki to take down with due care the abstract of the defence on the first day fixed for the hearing of the case, when the case has to be postponed. As a rule, the defence in a rent-suit is more complicated than the defence in money suits triable summarily by the Small Cause Court.

"I beg to object to the application of section 189 of the Code of Civil Procedure to appealable rent-suits. It would be very difficult for a court of appeal, having to deal with facts, to come to a correct conclusion as to the merits of the case without having the entire evidence before it."

7. *Section 166 of the Bill.*—I do not agree with Babu Mohini Mohun Roy in saying that the principle of payment by instalments is inapplicable to rent decrees. It is true that "there is only accumulation of interest on other decrees for payment of money," and in the majority of cases of rent decrees the debt accumulates with interest and subsequent instalments of rent.

But it must be borne in mind that the raiyat's income depends on the produce of his land, and he has his bad year or consecutive bad years to meet. This section is a supplement to sections 164 and 165. I object to those sections themselves for the reasons stated in my last report (Extra Supplement to the *Calcutta Gazette*, October 15th, 1884, page 488), and I am humbly of opinion that the provisions of section 210 of the Civil Procedure Code should be made applicable to rent-suits.

8. *Section 174 of the Bill.*—I agree with Babu Mohini Mohun Roy in suggesting that the local enquiry contemplated by clause 2 of the section may be directed to be made by a Civil Court amin.

9. *Chapter XV of the Bill.*—I do not agree with Babu Mohini Mohun Roy in making the special procedure proposed in his draft for the summary sale of under-tenures applicable to sales for arrears under decrees. The adoption of the special procedure with regard to patni taluks and other permanent tenures is very likely to materially diminish the number of sales of such tenures for arrears under decrees. The procedure for sale for arrears under decrees will be chiefly concerned with the ryoti or occupancy holdings. It is said that there will be a greater concourse of people interested in land on quarterly sale days, and larger competition and greater publicity than on sale days spread over 12 months in the year. But I beg to submit that candidates for the purchase of ryoti holdings are generally people of the village where the ryoti is situated, or of villages adjacent. Such candidates come to bid for a particular holding or holdings lying near their homes. The presence of such people is not likely materially to be affected by the decrease of the number of sale days in the year. In the result I am not prepared to say that the advantages to be derived from the presence of a greater number of people on quarterly sale days are likely to compensate for the disadvantage to be undergone by the landlord in the shape of delay in recovering his money, and by the raiyat in that of accrual of interest on his debt.

10. In cases of small ryoti holdings it is sometimes more desirable to have the sale held at the spot than within the court premises.

11. I think it is better to authorize the High Court to make rules for the guidance of the courts in the exercise of their duties with regard to sale for arrears under decrees than to lay down in the Act any inflexible rules regarding the time and place of sales. The enactment of a section similar to paragraph 2 of section 287 of the Civil Procedure Code, enabling the Hon'ble Court to make different rules for different courts, according to local circumstances, is likely to prove beneficial to both the landlords and the tenants.

12. As the holding is hypothecated for rent (section 77 of the revised Bill), it is not necessary to make it compulsory on the part of the landlord to attach the holding. Delay may be avoided by expressly authorizing courts to issue the proclamation of sale in the first instance.

13. I agree with Babu Mohini Mohun Roy in making the provisions of sections X, XIII, XVI, and XVII of his draft applicable to sales for arrears under decrees.

14. I am also of opinion that the sections regarding registered and notified incumbrances may safely be eliminated from the present Bill.

15. In conclusion, I beg to state that the proposal made by Baboo Mohini Mohun Roy for the trial of all rent-suits by Subordinate Judges would, as indicated above, operate unfairly towards defendants in the suit. Besides, his suggestion to allow appeals in cases in which the question of title, &c., or of the amount of the rental, &c., is involved, from the Subordinate Judge's decision, would enormously add to the appellate work of the District Judge, who, on the other hand, would be deprived of a great portion of the assistance he now gets from the Subordinate Judge in consequence of that officer's time being occupied in the disposal of all original rent-suits. Furthermore, the engaging of pleaders in the Subordinate Judge's court in small rent suits would be more expensive and thus the plan proposed, far from cheapening litigation, would make it more costly. I am of opinion that the plan proposed of enabling landlords to apply for the recovery of arrears of rent under the rules for the execution of rent decrees, and of leaving the decision of objections to the execution department, is not likely to materially simplify matters, while it is likely to operate unfairly towards the tenant.

No. 481, dated Chupra, 21st November, 1884.

From—H. W. GORDON, Esq., District Judge of Sarun,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2425T—R, dated the 23rd October 1884, and subsequent letter of the 4th instant, requesting me to submit an expression of my opinion on the views and proposals set forth in a pamphlet by Baboo Mohini Mohun Rai on the procedure sections of the Bengal Tenancy Bill, I have the honour to observe as follows:—

PART I.

2. The procedure proposed by the author in this part applies not to all tenures as defined in the revised Bill, but to permanent tenures only, such as *patnis* and the like, which largely

exist in the district of Bengal Proper. In Behar, I believe, permanent tenures, such as *mukarrari* tenures and the like, are not very numerous, and where they exist they are generally created by deeds, or are recorded in settlement proceedings in which the annual rental and instalments in which the rent is payable are clearly specified. The result is that disputes regarding these matters are exceedingly rare, and sales therefore of such tenures for arrears of rent seldom take place in this part of the country. Accordingly, the special procedure suggested in the pamphlet, even if it be accepted and adopted, would not materially affect Behar, or contribute to any appreciable extent towards the reduction of litigation.

3. Generally speaking, I cannot concur in the writer's proposals. I object to the civil court being made, so to speak, a court of registration, and so vested with executive functions. Further, these registration proceedings will, I believe, be mostly contentious. Disputes between the parties will have to be determined as in a regular suit, and after registration come the so-called execution proceedings in which the issue of payment will have to be tried and determined as between *zamindar* and tenure-holder. After sale other complications will arise, inasmuch as any person having an interest in the tenure voidable on sale may apply for compensation out of the surplus proceeds of sale, and all questions relating to the distribution of these proceeds will have to be dealt with and determined by the court. The procedure, instead of being simplified, will thus become cumbrous and complicated, and more time will probably be taken up in disposing of such questions than in the trial of separate suits. Instead, therefore, of reducing and simplifying litigation, the proposed procedure is, I fear, calculated to augment and protract it, as well as to increase expense. It is, I consider, a mistake to attempt to assimilate the special procedure of Regulation VIII of 1819 to the trial of ordinary rent suits. The *patnidar* is often a more wealthy and influential man than the *zamindar* himself, and there is little analogy between a *patnidar* and an ordinary raiyat. The summary procedure of Regulation VIII of 1819, which is embodied in Chapter XVI of the revised Bill, has, the author allows, hitherto worked very successfully, and no sufficient reason has, I submit, been made out for changing it. Indeed, in the interests of the *zamindars*, it ought, I think, to be retained.

PART II.

4. I am equally opposed to the procedure proposed in this part. That it will simplify matters and diminish litigation to any great extent I very much doubt. The court will merely have to enquire into and determine issues in the Execution Department, which would otherwise be disposed of in a regular civil suit. The question of payment of rent is not so unimportant a matter in a rent suit as the author thinks. In Behar especially, where printed receipts are at present rarely used, the controversy as to payment is in fact between the *patwari* on the one side, and the raiyat on the other, and it is no easy task to determine which of the two is speaking the truth. Such a matter ought not to be determined in the Execution Department. Further, other questions might arise between the parties, *e. g.*, the raiyat might deny the landlord's title, alleging that the land had changed hands, subsequent to the passing of the decree (the *onus* would of course lie on the raiyat under section 109 of the Evidence Act to prove this), and this is a question which ought to be determined in the ordinary way in a civil suit, and not in the Execution Department. Such a procedure would be opposed to the whole theory on which the trial of civil suits proceeds. Again, a decree obtained by a landlord against a raiyat, in which the annual rental (disputes as to instalments are rarely or never raised in rent suits in Behar) cannot in all fairness to the raiyat be treated as *res judicata* in subsequent proceedings between the same parties; yet this is what the writer's procedure would amount to. Such a decree would no doubt be *primâ facie* evidence against the raiyat in a subsequent suit, but he might allege, and with truth, that for some cause or other there had been a decrease in his rent since that decree was passed against him, and this matter, if tried at all, would, under the proposed procedure, have to be tried in the Execution Department in the same way as in a regular suit. Altogether, therefore, I am of opinion that the ordinary procedure by suit should be adhered to, otherwise the raiyats may be placed at a great disadvantage in defending their rights in an execution proceeding. There might perhaps be a saving of expense in the matter of court fees on plaints (these the writer thinks are small), but this would not compensate for the injustice that might be done to the raiyats in many instances; and even allowing that the author's proposed procedure might slightly cheapen litigation so far as the parties are concerned, it is very doubtful whether it would shorten it.

5. As regards the writer's criticisms of certain sections of the revised Bill, I think section 168 should be left intact. It is desirable that the District Judge should be vested with revisional powers in suits in which there is no appeal. If it be objected that the applicant can subsequently move the High Court, this difficulty might be met by adding to section 168—"such order shall be final." I am opposed to adding anything to the 4th paragraph of section 168. Disputes about instalments are rarely raised, and if appeals are allowed in all cases in which a question of the amount of annual rent payable by the tenant has been determined, then paragraphs (*a* and *b*) will be of no effect in checking appeals, as this is a question that is raised in most rent suits. I do not think sub-section (*e*) of section 163 should be struck out. If it be, then written statements might be filed in cases in which they

were not at all necessary. The court might be allowed to exercise its discretion in calling for a written defence, as suggested in paragraph 35 of my letter No. 320, dated 30th July 1884. Boundaries should, I think, be stated in the plaint as required by section 167. It will be to the advantage of both parties that this matter be decided between them once for all I agree with the author that payment by instalments is not applicable to rent decrees. I also think the local enquiry referred to in paragraph (2) of section 174 might be better made by a Civil Court Amin.

6. The writer's comments on Chapter XV of the revised Bill do not appear to call for special remark. The procedure he sugests will not, I think, simplify matters much. Quarterly instead of monthly sales will not be of much advantage to the parties concerned.

7. I object to the writer's proposal to vest Subordinate Judges with exclusive jurisdiction in rent suits. The only point in its favour seems to be that it will prevent disputes as to jurisdiction. But such questions will not be often raised, and they can easily be decided as in title suits by the court in which the plaint is filed. To entrust exclusive jurisdiction to Subordinate Judges will be to cause needless expense to the State and a great waste of judicial strength. The courts of Subordinate Judges are also courts of appeal, and competent officers can decide four or five appeals in the same time as they would take to try two or three rent suits. Further, at outlying Munsifees there are no Subordinate Judges. To carry out the author's scheme Subordinate Judges would either have to be posted to these stations at an additional cost to the State, or else suitors will have to come long distances into head-quarters to file their plaints, thereby entailing great hardship and expense on the parties concerned, as well as on the witnesses who may be cited on either side. Munsifs of approved experience and judicial ability are now appointed to each district to try rent suits exclusively. This scheme, I believe, works well and should be retained.

8. My views in regard to the cheapening and shortening of litigation are in accord with those enunciated by the Hon'ble Judges of the High Court in Mr. Bayley's letter No. 1986, dated August 1884, to the Secretary to the Government of India. To avoid delay, it is desirable to increase the judicial staff whenever an accumulation of arrears occurs, and to cheapen litigation the court fees might be reduced to what they were before the transfer of rent suits from the Revenue to the Civil Courts. The annual revenue derived from court fees is greatly in excess of expenditure, so that the State might well spare some of it to achieve the desired objects.

Dated Serajgunge, the 22nd November, 1884.

From—Baboo Kailas Chandra Mojumdar, Moonsif of Serajgunge,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2433T—R, dated the 23rd October last, forwarding, for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure section of the Bengal Tenancy Bill, I have the honour to submit as follows.

Part I of the pamphlet.

A mere summary procedure is really defective. Such a procedure is, as the writer says, often the prelude to lengthy litigation. The proposal to transfer the sales of permanent tenures to civil courts is therefore a move in the right direction. This will avoid summary sales being followed by regular civil suits, and it will be to the beneficial interest of landlords and tenants, if the questions which arise between them should once for all be tried by the civil courts.

The suggestion to entrust the work of registration of tenures to the civil court is also, in my humble opinion, a good suggestion.

Registration of the lands of a proprietor under Bengal Act VII of 1876 is no evidence at all upon the question of title of a proprieter so registered, and does not relieve a proprietor from the burden of proving his title in a regular civil suit; but it would not have been so if this were once for all done by the civil courts.

The registration of tenures by the civil courts will thus be a boon to tenure-holders, and if the disputes are settled once for all, it will relieve the tenure holders of a great amount of trouble and expense.

To make the law complete in itself, these works should be transferred to the civil courts, and the division of jurisdiction between civil and revenue courts should, as far as possible, be done away with. The spirit of the proposals is therefore good, but the way in which the writer proposes to carry out the proposals is, in my opinion, objectionable.

The writer proposes to have these works done by the courts of the Subordinate Judge alone; but this will put poor tenure-holders, who live at a distance from the head-quarters of a district, to a very great disadvantage. The benefit of the law will, I fear not be availd of by these, and then the law I think will have practically no effect.

The difficulty which proprietors undergo in getting their lands registered under the Land Registration Act will be greater in the case of ordinary tenure-holders if they are put to the same trouble and expense in going to the Sudder and getting their tenures registered there.

The intention of the writer may, I think, be fairly carried out without any expensive machinery, if officers taken from the higher grades of Moonsifs are specially appointed for the purpose at every sub-division.

It will be convenient if the suggestion is modified in the above way.

The registration of tenures has been prosided for to bring tennres under the provisions of the "special procedure for the sale of permanent tenures;" but to give landlords the benefit of section 122 of the Bill, the rules for the registration of tenures might with advantage be extended to ryoti holdings also.

A registration law well devided on the lines of the Land Registration Act would be the greatest possible blessing to the agricultural community, and I think that the registration of ryoti holdings should form a part of the suggestion made for the registration of tenures.

The other changes proposed call for no remarks.

Part II. With reference to this part, I have been called on to submit my opinion on two points—

(1). Whether the simplified procedure suggested for the trial of rent suits would operate unfairly towards the defendants in the suits; and (ii) whether it would shorten and cheapen litigation.

In my humble opinion the procedure suggested would operate unfairly towards the defendants, and that in this way.

In a simple suit for rent, the questions usually raised are not only the three mentioned by the writer, but there are others more intricate and important as mentioned in the ruling reported in I. L. R. 8, Calc. 238.

Even when in a civil suit a decree has been made for the rent of a holding or tenure, the defendants in subsequent suits are, under the law of evidence, not estopped from raising other questions, such as that the plaintiff's title has expired or has been defeated by a title paramount; that the defendant has been evicted by the plaintiff; that his occupation has been determined by relinquishment, and so forth.

If after a decree is obtained the landlord's title passes in to the hands of third parties and a suit for rent for subsequent years is brought by a plaintiff claiming by a derivative title, the defendant is not even stopped from shewing that the title is really not in the plaintiff, but in some other person—vide the ruling cited above.

Thus it will appear that even after a decree is obtained the defendant is entitled to raise many intricate questions not taken notice of by the writer, and it will be to the disadvantage of the defendant if these questions are tried in the execution stage.

Any question tried in execution proceedings is usually tried hastily and perfunctorily. To have intricate questions tried in execution proceedings will therofore surely operate unfairly towards the defendants.

To abridge judicial enquiry in this way will not, in any opinion, be safe to the tenants.

The procedure suggested may have some application in cases in which the parties remain the same, and there is no dispute in other points; but the number of such cases is very few.

In a large number of cases, the simplified procedure will I fear lead to complication, and will be abused to the detriment of the interest of the defendants.

If the decrees are *ex parte* and unexecuted, which with designing landlords is generally the case, the suggestion is open to another objection, and that is, that these decrees cannot finally settle the question of rent. The defendants in such cases are entitled to dispute the rate of rent in subsequent suits— *vide* the ruling, I.L.R. 8 Calc. 275.

There is onother suggestion of the writer which is most objectionable, and that is to make all suits and applications under the Rent Law triable by the court of the Subordinate Judge.

This may be good in a zamindar's point of view, but if the view be adopted, necessary litigation will also be avoided. Advantage will then be taken of the helplessness of the ryots, and the doors of justice will in a manner be practically closed to poor landlords and tenants.

The writer seems to have left out of consideration the condition of the people of the remote mofussil, and how cheaply the poor landlords and tenants get relief in the courts of Moonsifs.

The heavy expense which a party seeking to obtain relief in the court of Subordinate Judges is put to, in addition to other charges which he cannot count as "costs of the suit," will not only shorten litigation, which is necessary, but will I fear be an absolute bar to suitors getting relief in courts.

If the public are consulted they will agree with me in thinking that the writer is not right in saying that "it will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges, &c."

Taking the period of service the Moonsifs may be less experienced officers than the Subordinate Judges, but that they, as a class, do not possess general confidence, is an assertion which I cannot persuade myself to believe. There are many in the higher grades of Moonsifs who I think are equally comptent to try rent cases with ability.

I should not say anything more on the subject, but this I cannot refrain from saying, that is, that the Moonsifs as a class cannot be said to be less efficient men.

In my humble opinion the execution procedure will present difficulty, and the defendants will not have a fair trial of their case if this procedure be adopted.

The agricultural class will have a greater difficulty if all suits and applications under the Rent Law are tried by the court of the Subordinate Judge alone.

These suggestions of the writer are therefore unworkable.

The procedure which I beg to suggest is—

(i) That suits for rent up to Rs. 1,000 will be tried by officers taken from the higher grade of Moonsifs, and to be specially empowered by Government to exercise jurisdiction in these cases.

(ii) That one of the special officers appointed will be placed at every sub-division.

(iii) That the ordinary procedure will be observed in rent cases of greater value and in cases in which issues are to be framed, but that simple suits up to Rs. 50 will be tried under the Small Cause Court procedure.

If possible, some Judges may also be made itinerant Judges.

(Suits for the rent of bastu lands and of lands situated in a town are now tried under the Small Cause Court procedure. This provision therefore might with advantage be extended to other rent-suits of smaller values, in which intricate questions are not involved.)

As a part of this a reduction of the heavy institution fees may be suggested, which will have the effect of changing plaints into petitions as proposed by the writer.

As difficulty does generally arise, specially at the time of sale, if a proper identification of the land held by the tenant is not given in the plaint, I think that it will be to the good of the tenants if in plaints the landlord give the boundaries, or state something which may identify the land held by the defendant as a tenant.

In cases in which the defendant pleads that he has been evicted by the plaintiff, or that his occupation has been determined by relinquishment, the question of boundaries of the land held by the defendant forms a very important question for trial in the rent-suit.

The other changes proposed may be accepted.

No. 34, dated Burdwan, the 22nd November, 1884.

From.—Baboo Mohendro Nath Mitter, Subordinate Judge of Burdwan,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letters Nos. 2429T—R and 1665—911, dated the 23rd October and the 4th November, respectively, forwarding, for an expression of my opinion, a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill, I beg most respectfully to submit the following observations for the consideration of His Honour the Lieutenant-Governor.

2. Baboo Mohini Mohan Roy starts with the assumption that suits for rent against tenureholders form a large proportion of the rent litigation of the province, or at any rate, he believes that the aggregate amount of litigation in, and resulting from, this class of rent-suits is quite equal to the aggregate amount of litigation in, and resulting from, the class of suits for rent against ryots. This has led him to give undue prominence to his especial procedure for the sale of permanent tenures for arrears accruing thereupon, and one of his principal reasons for suggesting it seems to be that almost every Regulation VIII sale is followed by a harassing suit for setting aside the sale.

3. To show that Baboo Mohini Mohan is entirely wrong in his assumptions and statements, I have collected the following facts and figures from the sherista of the Maharajah of Burdwan, who has a great deal more to do with patni tenures than any other zemindar in Bengal.

Applications for the sale of Patni Tenures in the District of Burdwan made by the Maharajah of Burdwan in the years 1288, 1289, and 1290.

The years in which applications were made.		Number of applications.	Number of sales.	Number of suits for setting aside sales.
1288	Applications for sale at the beginning of the year . .	594	19	1
	Ditto in the middle of the year . . .	815	17	1
	TOTAL .	1,409	36	2
1289	Applications for sale at the beginning of the year . .	660	9	1
	Ditto in the middle of the year . . .	777	20	1
	TOTAL .	1,437	29	2
1290	Applications for sale at the beginning of the year . .	570	19	0
	Ditto in the middle of the year . . .	810	27	2
	TOTAL .	1,380	46	2
	GRAND TOTAL .	4,226	111	6

The above statement clearly shows that Regulation VIII of 1819 has worked very satisfactorily, and that the percentage of suits for setting aside patni sales during the last three years is less than six. In my last report I have already stated that this law ought not to be incorporated into the Tenancy Bill. It ought to be left as it is, and that if any amendment is necessary, it is only in regard to the service of notice of sale. The uncertainty that hangs over this matter, and the controversy that usually takes place as to whether the persons attesting the service of a notice are substantial persons within the meaning of the law, may all be put an end to, if a separate sale notice paper be printed and published by Government twice a year for each district or Commissioner's division. The bulk of the existing Government Gazette will be periodically increased if these notices be inserted therein, and people interested in the notices only will feel it a grievance to subscribe to the Gazette for them. It would be desirable, therefore, that a separate sale notice paper should be issued by Government, and as many copies as may be subscribed for should be sent to each district or division by post. Four to eight annas annual subscription for a copy, besides the charges for the insertion of the notices, would re-imburse Government for all the expenses that may be incurred in the publication, and patnidars and other under-tenureholders, whose interest it will be to protect the superior tenure from sale, and intending purchasers, will be obliged to subscribe and will ungrudgingly subscribe, if it be enacted that the publication of notice in that paper shall be conclusive evidence of service. This is the only amendment that is required in the patni law in the interests of both the zemindar and his under-tenureholders.

4. There cannot be the slightest doubt that suits for rent against tenureholders form a very insignificant proportion of the rent litigation of the province. Such suits are mostly, owing to their value exceeding one thousand rupees, brought in the courts of the Subordinate Judges, and their number is very small compared to that of suits brought against ryots in the Munsifs' courts. I will take, for example, the district of Burdwan as its figures are at hand—

Year.	Munsif's Courts.			Subordinate Judges' Courts.		
	Instituted.	Disposed of—		Instituted.	Disposed of—	
		Contested.	*Ex parte.*		Contested.	*Ex parte.*
1881	6,106	1,446	4,597	44	9	32
1882	6,971	1,408	5,619	28	13	17
1883	6,639	1,354	5,644	44	15	29
Total .	19,716	4,208	15,860	116	37	78

It will be seen from the above table that Baboo Mohini Mohan's comparison between the two classes of suits is quite erroneous. He is also wrong in saying that ryots are seldom sued except when there is ill-feeling between them and their landlord. The large number of *ex parte* cases decided every year shows that ryots are sued even where there is no combination among them. They either neglect to pay their rents, or are, from various causes, unable to pay them.

5. The suggestions for simplifying the procedure for the trial of rent-suits made in part II of the pamphlet will practically prove ineffectual so far as the delay in the disposal of those suits and the harassment caused thereby are concerned. The writer simply objects to the proceeding that shall be held to hear and determine the ryots' objections on presentation of petition for recovery of arrears by the zemindar being called a suit. Such a procedure, moreover, would operate unfairly towards the ryot. It would be in the power of an unscrupulous landlord to oppress, harass, or ruin his tenant by not causing the notice to be served. The proposal for making all rent-suits and applications under the rent law cognizable by the court of the Subordinate Judge, set forth in page 32 of the pamphlet, cannot be seriously entertained. The present number of those Judges will have to be increased ten times to cope with the work, and the cost would be immense.

6. I am not prepared to recommend a novel and untried procedure for the sake of a change. It is far better that we should proceed on sure and tried ground. In my last report I have stated that the provisions embodied in sections 163, 165, and 168 of the revised Tenancy Bill will meet most of the requirements of both the landlords and their tenants. I would most respectfully invite attention to paragraphs 25, 27, and 28 of that report. There seems to be some difference of opinion in regard to the retention of clauses (*e*) and (*f*) in section 163 of the revised Bill. In my humble opinion if those clauses are struck out, the very essence of expedition would be destroyed.

7. The only other suggestion that I have to make for expediting the disposal of rent-suits is that the present judicial staff should be increased and their establishments strengthened.

No. 9, dated Barisaul, the 24th November, 1884.

From—Baboo Beni Madhub Mitter, Subordinate Judge of Backergunge,

To—The Officiating Secretary to the Government of Bengal, Revenue Department.

With reference to your predecessor's letter No. 2431T—R (Revenue Department), dated the 24th October 1884, and with reference to your letter No. 1667-913 L—R, dated the 4th November 1884, I have the honour to state most humbly that the special procedure for the realization of arrears of rent from the permanent tenure-holders, suggested by Baboo Mohini Mohun Roy in Part I of his pamphlet, appears to be objectionable, in my humble opinion, on account of the following reasons:—

(*a*).—In a district like Backergunge, where there are about 15 grades of permanent under-tenures, and where there are many under-tenures which lie under three or four different superior tenures or under tenures as the case may be, it will be a very difficult and tedious affair to prepare registers like those proposed in the pamphlet.

(*b*).—The procedure which is not equally applicable to all classes of tenants does not appear to be a fair one.

(*c*).—If the special procedure mentioned in Part I of the pamphlet be introduced then the zemindars would be able to realize the rent due to them from the permanent tenure-holders very easily, but those permanent tenure-holders who are to realise rent from under-tenants who hold ryoti holdings, or whose tenures are other than permanent tenures, would be thrown into a great hardship, for their tenures would be sold if they fail to pay their rent speedily to their superior landlords, but they would not be able to realize so soon the rent which they would get from their under-tenants. It may be said that the summary procedure for selling the patnis under Regulation VIII of 1819 has been in force for a long time, and the patnidars have never complained of any hardship resulting from that procedure. Then why should the other classes of tenure-holders complain of any hardship if the proposed procedure, which in certain respects would be better than that prescribed by Regulation VIII of 1819, be introduced? But the patni tenures cannot be compared with the other classes of tenures. The patni tenures are created by the zemindars solely for the purpose of collecting rents, and the zemindar at the time of granting the patni allows some profit to the patnidar out of his own profit.

The under-tenures which exist in this district were originally created for the purpose of clearing the jungles and of making the waste land culturable, and the tenure-holders had to devote their labour and capital for the purpose of making the jungle-covered lands culturable, that being so, the position of these tenure-holders should be better than that of the patnidars.

(*d*).—Under the special procedure, the tenure-holder would be obliged to deposit under section VIII the amount of the landlord's demand in order to stay the sale, although he might have already paid the greater part of that amount. It is not improbable that some unscrupulous landlord might apply for selling the tenures of their under-tenants, ignoring the receipt of the money paid by the tenure-holders.

(*e*).—The provision of section XIII would be very injurious to the tenure-holders, for if all sales be liable to be set aside indiscriminately, then very few bidders would come forward to bid, and consequently the tenures would be sold at a very low price.

2. The simplified procedure suggested for the trial of rent-suits appears, in my humble opinion, to be also objectionable because it would sometimes throw the defendants to a great hardship, for section III of part II proposes to give the courts power to issue process for sale of the defendant's tenure or for the attachment of the moveable and immoveable property belonging to him simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him. It might happen that some unscrupulous landlord, in order to injure his tenant with whom he might be on bad terms, would sue for the rent which might have already been paid, and would throw obstacles in the way of his defending the suit by attaching his properties or by issuing a process of selling his under-tenure simultaneously with the issue of notice to the defendant. In some cases the tenure or the holding of the under-tenant would be sold even before he could be aware of it, if the notice be not served upon him properly.

3. If the latter part of section III of part II (which proposes to give power to the court to issue process for sale of the tenure of the defendant or for attachment of the moveable and immoveable properties of the defendant simultaneously with the issue of notice to the opposite party to show cause why the amount claimed should not be levied from him) be abandoned, then the proposed procedure might be introduced. It would materially cheapen litigation, and to a certain extent it would shorten it.

No. 75, dated Noakhally, the 24th November, 1884.

From—Baboo Chandra Kumar Roy, M.A. and B.L., First Munsif of Sudharam,

To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your letters Nos. 2434T—R and 1670-916L—R, dated 23rd October last and 4th November current, respectively, I have the honor to submit the following notes on Baboo Mohini Mohun Roy's pamphlet on the procedure sections of the Tenancy Bill.

2. My views on the summary sale and special procedure chapters of the revised Tenancy Bill were expressed in my report submitted on the 28th July last, published in pages 540-9 of the extra Supplement of the *Calcutta Gazette*, dated 15th October last, and need not be repeated here.

3. The Part I of the pamphlet (procedure for the sale of permanent tenures) should, in my opinion, be extended to the transferable holdings also; and in order to benefit the petty tenure-holders and ryots in districts of Chittagong Division, where the head-quarters is not within easy reach from all parts of the country, the place of registration and sale should be transferred to Munsif's Court, when their annual rent is not above Rs. 100. The sale and registration of larger tenures may take place in the court of the Subordinate Judge or District Judge, where there is no Subordinate Judge as in this district. I am very much against the sale of small tenures and holdings at the head-quarters far away from the homes of the persons interested in them merely for the convenience of the zemindars, in order to relieve them of the petty costs and trouble of engaging an agent or pleader in every mofussil court It is practically seen that the same tenure fetches much higher price in the execution of decree sale held in Munsif's Court than in sale under Regulation VIII of 1819 in the Collector's office. The reasons are apparent.

4. On the simplified procedure suggested in Part II of the pamphlet, I beg to add that the petition mentioned in section 11 (page 28) for realization of subsequent arrears should either be verified or supported by an affidavit, and any wilful mis-statement in it should be subjected to summary punishment by the court to which it shall be made. This section may be extended to tenures and holdings created by registered deeds.

No. 1980—1024 L.R., dated 3rd December, 1884.

From—Officiating Under-Secretary to the Government of Bengal,

To—Secretary to the Government of India, Legislative Department.

In continuation of the letter from this Office No. 1906 T. R., dated the 15th September 1884, I am directed to submit copies of the letters noted below, regarding *utbandi* tenures.—

(1) Letter from the Commissioner of the Presidency Division, No 24 R. L., dated the 17th September 1884.

(2) Letter to the Commissioner of the Presidency Division, No. 2113 T. R., dated the 3rd October 1884.

(3) Letter from the Commissioner of the Presidency Division, No. 28 R. L., dated the 30th October 1884, and its enclosures.

No. 24 R.L., dated 17th September, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Secretary to the Government, Bengal.

WITH reference to your telegram of the 31st ultimo, I have the honour to give below an analysis reports of the district officers regarding *utbandi* tenures.

2. Mr. Stevens gives the following account of the *utbandi* tenures in the 24-Parganas. Such tenures prevail only in the northern part of the district, where lands in the khas possession of landlords are leased out to cultivators under verbal agreements. The tenancy ceases at the end of either the season or the period of the lease. The usual term is a year, after which the land may lie fallow on account of the exhaustion of its strength or because no one has come forward to take it. Hence the origin of the name *utbandi*. No occupancy-right grows in such tenures, and before the crop is reaped the landlord makes sure of the rent by watching that it is not taken away from the fields before his dues are satisfied. These tenures are known in the south of the district as *karfa* or *thika*.

From the very nature of tenures the ordinary incidents of a raiyati tenure cannot, Mr. Stevens thinks, apply to them, as there is an express understanding sanctioned by custom that the landlord will enter after the expiry of the term. But as land is becoming improved, and as there is an increasing demand for land amongst the cultivating classes owing to increase of population, the area hitherto classified as *utbandi* is daily becoming less and less, since landlords are quite open to make settlements with raiyats offering favourable rents.

Mr. Stevens does not think that the account of such tenures given by Dr. Hunter in his Statistical Report of Nuddea, as they stood in 1872, is in any way defective, but that the tendency is now towards a decrease in the arrears of such lands.

It is the opinion of Mr. Stevens that, so far as *utbandi* and similar tenures in his district are concerned, the saving of customary conditions provided for in the Bill (section 214) is sufficient.

3. In Nuddea the *utbandi* systems prevails to a large extent. A full account of these tenures is given in Dr. Hunter's Statistical Account. Mr. Tayler reports thus on these tenures: "The *utabandi*—the system under which uncultivated lands are brought under cultivation—and the actual area cultivated is measured and paid for at the rate prevailing in that

part of the country. Cultivators who take such lands are not obliged to cultivate them a second year, but as a rule they can keep them for certain for three years if they elect to do so. Generally the lands under this system are cultivated from one to five years, and then left fallow for the same period. The cultivators acquire no right of occupancy, nor do they desire to do so. There being more lands in the district than are required by the cultivators, they prefer to take lands which have been lying fallow for a term of years, and which are consequently likely to yield the more, to retaining the same land and cultivating it for once 12 years. The zamindars, on the other hand, are reluctant to allow cultivators to retain such lands for any length of time, both with the view to prevent their acquiring occupancy-rights and to prevent deterioration of such lands. In some cases zamindars get *salami* when allowing new cultivators to take such lands.

Before the introduction of Act X of 1859 raiyats were in the habit of taking any portion of such lands without permission of the landlord, but now they give notice and commence cultivation after sanction has been received.

The lands available for *utbandi* cultivation include—

First, Khamar lands, which include all lands in estates under the direct control of the zamindar, whether cultivated or not and all waste lands.

Second, naksau or *jamai* lands relinquished by raiyats and not re-let to fresh raiyats.

Third, all new *char* lands. The rate of rent is fixed for each village, except in the case of the third kind, for which the rate is fixed by agreement between the landlord and tenant. Tenants holding *jamai* lands sometimes, when unable to cultivate the whole area settled with them, let them in *utbandi* at somewhat higher rates.

During the cold weather months, and sometimes after the crop has first made its appearance, amins are deputed to measure the lands thus cultivated, and subsequently the gumashtas collect the rents.

The system is very well known and apparently appreciated by the raiyats. At first sight it might be thought that these raiyats are not so well off as their neighbours who own *jamai* lands, but such is not really the case. They are continually cultivating renovated lands that require no manure, and have to pay for the area actually cultivated, whereas those holding *jamai* lands have to pay for their holdings, whether cultivated in whole or in part or not at all; and, if they cultivate the whole, they must generally go to the expense of manuring, or else expect poorer crops. There are zamindars who have extensive tracts of such lands, which they would be very glad to let in jama; but few can be induced to take them, notwithstanding that the rate of rent may be as low as 10 annas per bigha.

The Collector also refers to Dr. Hunter's Statistical Account of Bengal, and to the note made by Jogendra Chunder Mowlik under section 6 of Act VIII of 1869.

4. *Jessore.*—There are few tenures of this description in this district. They are generally confined to waste lands and bhil lands, which are for the whole or the greater part of the year under water, and which are cultivated by the raiyats under special contract generally from year to year. These lands are taken at fixed or progressive rates of rent on terms agreed to by the raiyats. The landlord cannot, or at all events does not, enhance the rent, which should be payable in proportion to the quantity of land reclaimed and cultivated. The same raiyat can have the same lands for any number of years, but the custom is that he does not acquire a right of occupancy. As a matter of fact, the raiyat is not disturbed as long as he pays his rent and behaves himself well. The landlord does not enhance the rate originally agreed to if the raiyat refuses to pay such increase; but if there are conditions in the lease or conditions verbally agreed to, the rate is enhanced. The raiyat can be ejected at the will of the landlord, as the tenures are not *kaimi* or *pucca*.

The zamindar claims no rent for any year for land not cultivated, though it remains in the possession of the raiyat. The land is gradually cultivated by the raiyat, and after the crops are harvested the land is measured and the rent is assessed. The assessment is of course made at the rate originally agreed to.

With regard to applying the principles of the proposed rent law to *utbandi* tenures, the Collector is of opinion that the customs of the country are pretty certain to be good for the country itself. The people have done well enough with their customs, and, if there was not something radically good and sound in these customs, they would not live. He does not think that anything has been shown to justify interference with the usual customs in regard to *utbandi* lands and the extension of the principles of the Bill to them. He would let them stay as they are, and he does not think that much good can result from preventing the people concerned, who are the most interested, making their legal bargains in their own way.

5. *Khulna.*—The *utbandi* system is known only in one pargana (Khoraria), where the land is bad. The tenure is not a favourite one with the zamindar, as the sole risk is with him.

6. *Moorshedabad.*—*Utbandi* does not prevail to any great extent in this district, and is to be found only on the east side of the Bhagiruthee, chiefly in pargana Goas. The cultivator under this system, who has no rights whatever, either of occupancy or otherwise, takes the land by verbal permission of the zamindars, no written agreement being entered into, after which the holding is measured and assessed at the local rates as soon as it has been sown down and without any reference to the prospects of the crop. The rent so assessed is realized then and there, and this custom is observed in *do-fasli* lands each time the crop is sown, that is, twice in the

year, the reason being that the cultivator if left to himself would disappear immediately after harvest.

The Collector would deprecate any attempt at legislative interference here on the ground that the zamindar does not want it, and that if the cultivator is to be turned into a privileged person, possessing rights, and only to be ejected with difficulty, the result will be that the land will be allowed to remain waste to the mutual detriment of both parties. The arrangement is a fair and natural one; it is well understood, and the burden of proof is surely upon those who would replace it by something new, and not on the supporter of the perhaps antiquated policy of "let well alone."

No. 2113T.-R., dated 3rd October, 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to Government, Bengal,

To—The Commissioner, Presidency Division,

I am directed to acknowledge the receipt of your letter No. 24R.L., dated the 17th September 1884, with which you submit an analysis of the reports regarding *utbandi* tenures from the officers in charge of the districts of your division.

2. In reply, I am to call your attention to the manifest discrepancy between the account of those tenures now given by the Collector of Nuddea and that quoted from the same officer in the report of the Board of Revenue on estates under direct management in 1882-83. The Lieutenant-Governor is surprised that the latter account, which directly contradicts the former, should have been submitted to Government without any attempt being made either by yourself or by the Collector to reconcile the severe condemnation of the *utbandi* tenure contained in the one with the distinct approval recorded in the other. I am, therefore, to request that Mr. Tayler may at once be called upon to explain this, which is by no means a matter of slight consequence.

No. 28R.-L., dated 30th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Secretary to Government, Bengal,

With reference to your No. 2113T.R. of the 3rd instant, I have the honour to enclose copy of the correspondence noted in the margin.

Collector of Nuddea, to Commissioner, Presidency Division, No. 1577G., dated 21st October 1884.
Commissioner, to Collecter, No. 94RL. of 24th October 1884.
Collector, to Commissioner, No. 1644 of 25th October 1884.

2. Mr. Tayler's remarks quoted in the Board's report on Government estates for 1882-83 were transmitted by my predecessor. Mr. Tayler's explanation is, practically, that the remarks quoted were written by him with reference to his khás maháls only, and from the point of view of a proprietor anxious to have all the lands of his estate tenanted. In his letter, the substance of which was given by me, he reported such facts with reference to the system as a whole as existed generally throughout the district.

3. In the descriptions of the *utbandi* system itself there is very little difference between the two accounts. In the latter letter the effects of the system on the land are not noticed at all. In the former letter Mr. Tayler says that the prevalence of the system has resulted in the inferiority of the soil. It is of course possible that, under a system of regular cultivation, with adequate drainage, irrigation and manure, the lands might be improved; whether under present circumstances they would repay the outlay is another question. It appears to me perfectly clear that it is the character of the soil, and the style of cultivation suitable to it, that have brought about the *utbandi* system, and not the system that has resulted in bringing about the character of the soil.

4. As the increasing demand for produce and rising prices permit the regular extension of cultivation to lands that will not now repay regular and steady cultivation, the *utbandi* system will be gradually replaced, wherever possible, by the ordinary system, just as in frontier districts lands formerly used by aboriginal tribes for jooming are now in many places steadily cultivated.

No. 1577G., dated 21st October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,

To—The Commissioner, Presidency Division.

With reference to your memorandun No. 86R.L., dated the 9th instant, have the honour to report that the account given by me, which has been quoted by the Board in their Report on Estates under Khás Management in 1882-83, had special reference to the khás máhál in this district under my management, and notably to those in the sub-division of Meherpore, and not to the system as a whole: that my No. 1354G., dated 6th ultimo, referred to the system generally, and even in it I reported that there were zamindars who would be glad to let in jama lands now held under the *utbandi* system.

2. In our khás máhals, and especially in those within the Meherpore sub-division, all the lands of the mahál are of an inferior quality, and great portions almost unfit for cultivation, and consequently raiyats are unwilling to take such portions in the place even of those which, though fit for cultivation, have been cultivated for some years, and consequently unfit lands are allowed to remain unfit. In zamindaris, on the other hand, these tracts are more or less cultivable. More pressure is likely, too, to be brought on raiyats than would be the case in lands under Government officers, and hence more or less changes occur even from good to less good lands.

3. In the one case I gave expression to my views as to the adaptability of the system to a particular class of lands, while in the other I simply reported such facts with reference to the system as a whole, as existed generally throughout the whole district.

No. 94R.-L., dated 24th October, 1884.

From—A. SMITH, Esq., Commissioner, Presidency Division,

To—The Collector, Nuddea.

Your letter No. 1577G., dated the 21st instant, on the subject of the *uthandi* tenures. It seems to me that the explanation furnished by you is not altogether satisfactory. Taking for granted that the account previously given had reference to *uthandi* tenures in khás mahál only, your observations as quoted in paragraph 36 of the Board's Report on the admimistration of Government Estates for the year 1882-83 indicate that the *uthandi* system *generally* was condemned. You wrote—"The prevalence of the *uthandi* system *in this district* has resulted in the inferiority of the soil." But according to the present account this system "is *appreciated* by the raiyats." I request that you will reconcile more clearly the discrepancies between the two reports by *return of post*.

No. 1644G., dated 25th October, 1884.

From—W. V. G. TAYLER, Esq., Collector, Nuddea,

To—The Commissioner, Presidency Division.

With reference to your letter No. 94R.-L., dated the 24th instant, I have the honour to state that the sentence quoted by you has not been completed; it should be "has resulted in the inferiority of the soil and the consequent neglected state *of such mahál*s under khás management." This sentence refers only to *such mahál*s *under khás management*, and not to the district in general.

2. In the district as a whole the system is appreciated by raiyats, especially in zamindáris, for the reasons already given; but I am still of opinion that in most of our khás mahál*s* it would be better to introduce the *jamai* system, and, as I before stated, there are even zamindárs who are of the same mind as regards tracts of land within their zamíndáris.

3. I am at a loss to know what further explanation to give, and would only therefore state that, what is appreciated by the raiyat is not necessarily good for a mahál in a zamindár's point of view.

No. 52, dated 3rd December, 1884.

From - SURYA NARAIN SINGH, Secretary, Bhaugulpore Landholders Association,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward in a separate cover ten copies of a memorial (one copy of the memorial is signed by the president of the meeting) and notes on the Bengal Tenancy Bill on behalf of the zemíndárs and other landholders of the Bhaugulpore Division, in accordance with a Resolution passed at a public meeting held on the 25th July last, and five copies of the Resolutions passed at the said meeting, for the favourable consideration of His Excellency the Viceroy and Governor General in Council.

Dated 1st November, 1884.

To—The Right Honourable the Viceroy and Governor General of India in Council.

The humble memorial of the Zemindars and other Landholders of the Bhaugulpore Division—

MOST RESPECTFULLY SHEWETH,—That your memorialists presented to Your Excellency a memorial, dated 9th January 1884, on the Bengal Tenancy Bill of 1883, in which they set forth their grievances against the provisions thereof.

2. That since the presentation of the said memorial the Select Committee which sat on that Bill have submitted their Report, together with an amended Bill known as the revised Bengal Tenancy Bill.

3. That your memorialists regret to observe that although the officers consulted by Government on the Bill of 1883, many consisting of Commissioners of Divisions, Collectors and others, had given their opinion that it contained provisions most revolutionary in their character and injurious to the interests of the landholding class the said provisions have been retained only with slight modifications in the revised Bill, and that other provisions have been added which tend to make the position of the zemíndár very uneasy and worse.

4. That your memorialists beg to submit that the result of the deliberations of the Select Committee could not have been otherwise than it has been, when it is borne in mind that the members of that body supporting the views of the zemíndárs were numerically weak and could be outvoted on any proposition having for its object the furtherance of their cause. Under these circumstances your memorialists pray that the said body may be so constituted as to remove the disadvantage which the zemíndárs necessarily labour under from its present constitution.

5. That with regard to the provisions of the revised Tenancy Bill your memorialists do not propose to enter here into a detailed examination of them, as they crave leave to annex hereto notes setting forth their views on the said provisions.

6. That as to the general feature of the revised Bill your memorialists beg to submit that it, like its predecessor, the Bill of 1883, tends to unduly interfere with the cherished rights of the zemíndárs conferred and confirmed by the solemn enactment of 1793, to oust the Civil Courts of their jurisdiction, and to centralise more power in the hands of the Revenue authorities against the express declaration of the Code relating to the Permanent Settlement; while it contains unworkable provisions and others which would lead to strife between landlords and tenants, it fails to secure the good of the actual cultivators of the soil by encouraging the growth of the middlemen class; and lastly, while fettering distraint with so many restrictions as to make it practically useless, it affords no facility to the zemíndárs for the speedy realization of arrears of rent.

7. That from the meetings held in various parts of the province it is apparent that neither landlords nor tenants are satisfied with the said Bill.

8. That under the circumstances humbly set forth in this memorial your memorialists pray that Your Excellency would be pleased to direct that the Bill be withdrawn.

9. That should Your Excellency in Council be still pleased to proceed with the Bill your memorialists beg to submit that, in so intricate and important a matter as the land questions legislation should be made after the fullest enquiry. In the present instance, your memorialist, crave leave to urge that such enquiry has not been made. Without meaning in any way to disparage the labours of the Bengal Rent Commission or the value of the official and other opinions obtained on the two Bills, your memorialists feel constrained to state that the said Commission did not proceed in the way generally adopted in such cases. The diversity of opinions expressed by responsible officers of Government and the non-official community and by public bodies and the press on the merits of the proposed legislation, and the need for further information felt by the Select Committee, as appears from their Report and also from the letter of the Government of India dated 5th May last, and of the Bengal Government dated 24th May 1884, fairly show that there is yet room for further enquiry, and the means heretofore adopted, namely, asking Government officials to report, is not the best plan of conducting such enquiry. Under these circumstances your memorialists pray that Your Excellency would be pleased to appoint a Commission consisting of non-official European and Native gentlemen with power to take evidence, and to suspend the proposed legislation until the said Commission shall have made its report.

10. That your memorialists have every reason to believe that the result of such enquiry would show how utterly unfounded are the charges generally preferred against them by those who advocate the present legislation, and would enable Your Excellency to do them that justice which they have a right to expect and which guides the British Government in its dealings with the various subject races that have been placed by Providence under its rule.

And your memorialists, as in duty bound, shall ever pray.

Notes on the Revised Tenancy Bill, 1884 by the Committee of the Bhagalpur Landholders' Association.

CHAPTER I.

Sec 3, Sub-Sec. 1.—It appears that the definition of "Estate" is taken from the Cess Act of 1880 B. C., where in section 4 Estate is defined to be "land included under one entry in the general Registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the Land Registration Act of 1876 B. C. and any similar law for the time being in force."

The word proprietor is defined in the Bill to mean a person or a number of persons owning an estate.

The proviso attached to sub-section (1) is rather invidious. If Government cannot be called proprietor with reference to its own lands, then the position of the tenants under it would be most anomalous. A person holding land under Government will not be a raiyat within the meaning of the Bill, and will not enjoy the privileges of a raiyat, *vide* sec. 5, sub sec. 3. Again, if a person takes a farm of a Government mehal what would be his position? He cannot be called a tenure-holder as defined in the Bill, because a tenure-holder is one who derives his right from a proprietor or another tenure-holder, and as shown above Government is not a proprietor, neither is it a tenure-holder. The position of tenants holding under the Government lessee would be worse. They cannot be raiyats, because in order to be a raiyat a person must, according to the Bill, hold under a tenure-holder or a proprietor, and the Government lessee is neither the one nor the other. Consequently the position of tenants in Government estates would be rendered most deplorable.

Sec. 3, Sub-Sec. 2 & 3.—Would rent-free holders, whose lands are not registered in the Collectorate, be deemed to be proprietors or tenants or tenure-holders? They are not proprietors as they do not own an estate. They are not tenants as they do not hold under another person. Probably such persons are included in the definition of tenure-holders, but what if the rent-free holding should be anterior to the Permanent Settlement? What if the lakherajdar should himself be cultivating the land all along or now? In the latter case would the lakherajdar be a raiyat?

Sec. 3, Sub-Sec. 8.—The Fusli year commences in Asin, but for agricultural purposes in districts where the Fusli year prevails the year practically begins in Asar and ends in Jeyth. Hence under the present law all notices of enhancement are required to be issued in or before the month of Jeyth.

CHAPTER II.

The provisions of this chapter are liable to the following objections:—

(*a*) They will give rise to endless complications in the relation existing between landlord and tenant.

(*b*) They will tend to increase the number of middlemen.

(*c*) Sec. 37 instead of checking sub-letting will have the effect of encouraging it and will ultimately create a number of petty middlemen whose existence was previously unknown, and whose principal business will be to fatten on the soil at the expense of the actual cultivators. It is now proposed to deal with all these points together. It is said that difficulty is often felt in deciding whether a tenant belongs to the class of raiyat or tenure-holder, and hence the necessity of defining the position of these classes. The number of cases in which the question arises whether a particular tenant is a raiyat or a tenure-holder is not large; granting that such questions frequently come before the courts, it is inexpedient to lay down hard and fast rules by which the decision of the court is to be guided. When a question of this nature comes before a court for trial, the best thing it can do is to decide it according to facts that may be proved before it in connection with the case. The suggestions on this point made by Babu Surja Narain Singh, B. L., in this letter to the Commissioner of Bhagalpur, published in page 78, Vol. II. of the Report of the Bengal Government on the proposed amendment of the law of landlord and tenant are worthy of consideration. The definition of tenure-holder as given in the Bill may be correct in a certain sense, but it is hardly a definition in the proper sense of the word. It is true that a tenure-holder generally collects rent and does not himself cultivate the land, but at the same time it should be considered that a tenure is not granted simply that the grantee might collect rent. Mr. Beames, whose views, it appears, have been adopted by the Select Committee in the framing of the definition of tenure-holder, says that "when a zemindar lets land to a tenure-holder, he considers that he is granting, and the tenure-holder considers that he is obtaining, the right to collect rents from a number of cultivators already actually in occupation of the land so granted." But it is submitted with deference that this view of the origin of a tenure is not exhaustive. A tenure carries with it rights and privileges of a valuable nature and not a mere right of collecting rent, and it may be that this right of collecting rent might not have been in the estimation of the parties when the tenure was created. People generally speak of a Lakheraj tenure, Mocuraree tenure or a Brahmoter tenure. But it is very doubtful, whether when a particular tenure, say a Lakheraj tenure, was originally granted, the grantor simply meant that the grantee should make collections from the raiyats in occupation. It might have been the case that the land demised was not originally in occupation of tenants. The lakherajdar might have cultivated the land himself. Subsequently he might have settled the land with raiyats. Therefore it is not always the fact that tenure-holder means a person who has acquired the right from a proprietor to collect rent. That in a majority of cases he collects rent may be true, but that is no reason why the fact of collecting rent should be made the basis whereon to ground the definition of a tenure-holder. Of course in deciding whether a person is a tenure-holder or a ryot, the fact whether he collects rent or not may be among other circumstances taken into consideration. But no such inflexible rules as prescribed in the Bill should be laid down.

In the next place it is submitted that the provisions of section 37 will scarcely be sufficient to prevent sub-letting. On the contrary when occupancy raiyats see that by sub-letting more than half of their holding they would be able to enjoy certain immunities and privileges which

they could not have enjoyed as occupancy raiyats, they would all the more be encouraged to sub-let. The mere fact that certain rules may be framed for subjecting their holdings to summary sale procedure is nothing compared to the advantages that are held out to them. Then again suppose an occupancy raiyat of 2 bighas of land sub-lets 1½ bighas, he is immediately turned into a tenure-holder. This, of course, is absurd in the very face of it. A tenure-holder of 2 bighas is opposed to ordinary ideas on the subject. Lastly, the provisions in question will operate injuriously to zemindars, for an occupancy holding converted into a tenure will escheat to the crown on failure of heirs, which it would not have done had it remained a raiyatty holding.

The forcible conversion of raiyatty holdings into tenures is opposed to the customary law of the country, and has been almost uninversally condemned. The reproduction of such a provision, though in a modified shape, in sec. 5, sub-sec. 5, is highly objectionable. It will be better to cite here the remarks of Mr. Reynolds on the corresponding section of the Rent Commission Bill:—"The really valid objections to the principle of the measure lie on the surface. It is an arbitrary rule overriding custom and contract and placing a number of persons in a position which they never desired or intended to fill. It trenches upon the rights of the zemindar by creating tenures without their consent. It cuts the knot instead of untying it and sets aside the present law and existing engagements in order to provide for a class of cases which cannot after all be very numerous." The presumption created under sec. 5, sub-section 5, is not warranted by existing circumstances. Undue encouragement should not be afforded to the increase in the number of tenure-holders. Why should the relation existing between the landlord and his tenant undergo a change solely by the act of one of the parties without the consent of the other party, namely the landlord.

But the principal objection to the provisions of this Chapter and to sec. 37 is that they will increase the chain of middlemen between the proprietor and the actual cultivator of the soil. The position of the under-raiyats will be pitiable in the extreme. Of course, it is admitted on all sides that it is inexpedient to put a stop to sub-letting altogether, but that is no reason why facility should be given to the growth of so many sub-tenures of a novel kind.

CHAPTER III.

Sec. 7, Sub-Sec. 1.—The use of the word "customary rate" in this sub-section would create much confusion. As a matter of fact, customary rate, as it was understood in the Regulations, does not exist. It would be better to substitute the words "prevailing rate."

Sec. 7, Sub-Sec. 3.—The existing law relating to enhancement of rent of tenures should be affirmed. It is not expedient nor necessary to make any change in it.

Sub-Sec. 3, Clause (a).—It would be unjust to the landlord to apply the provisions of this clause, where the tenure was originally granted for clearance of jungles, and in consideration of which a low rent was fixed. In this case when a landlord subsequently demands an increase of rent it would not be fair to take into consideration as to who cleared the jungles, because the tenant took the tenure with condition that he would bring it into a state of cultivation, and for this he got a very low rate fixed.

Clause (c).—Would the cost of collection mean the actual cost incurred by the tenure-holder or the ordinary cost of collection generally incurred by landlord? If the former, it would not be just to the proprietor or the superior tenure-holder.

Secs. 8, 9, & 10.—These sections are very hard and unjust towards the zemindars. Tenure-holders are generally influential classes of persons, and they can well afford to pay the increase demanded. Besides, where a very low rent was originally fixed, as in the instance given in note on Sec. 7, Sub-Sec. 3 (*a*), it would be very unjust to limit the zemindar to double the original rent.

Sec. 11.—In the heading of the section are the words "other incidents of tenures," but the section deals with only permanent tenures. What are permanent tenures? Are they tenures contemplated in section 6 of the Bill? The Bill defines tenure-holders. It should also define what are permanent tenures, at least give illustrations of them. Permanent tenure as understood in this country is generally a tenure that is held in perpetuity and at fixed rents, and descends from generation to generation. Some such definition or description is necessary in order that raiyats converted into tenure-holders by provisions of the Bill may not put forward frivolous claims to be considered as permanent tenure-holders.

Sec. 15, Sub-Sec. 1.—"On the joint application of the transferer and the transferee."—Provisions should be made in case where, as between the transferer and the transferee, one party is willing and the other is not willing to apply to the zemindar for registering the transfer.

Sec. 21.—"Or any share thereof."—Section 26 of the present Rent Act (Act VIII of 1869 B. C.) guards against the division of rent which may be caused by the transfer of a portion of a tenure, by enacting "that no zemindar or superior tenant shall be required to admit to registry, or give effect to any division or distribution of the rent payable on account of any such tenure nor shall any such division or distribution of rent be valid and binding with-

out the consent in writing of the zemindar or the superior tenant." Section 97 of the Bill also makes provision against the transfer of a portion of a holding. The definition of the word "holding" would seem to include a tenure, but this should be made clearer.

CHAPTER IV.

Raiyats holding at a fixed rent or rate of rent.

It is unjust to promote these raiyats to the position of tenure-holders. It has been held by the High Court that the status of these tenants is not higher than that of the occupancy tenants. The only superior advantage they enjoy is that by the operation of the rule of presumption they are entitled to sit at fixed rates. In other respects their status is the same as that of occupancy tenants.

CHAPTER V.

S S. 25, &c.—It is important to remember how these sections came to be engrafted on the Bill of 1883. The Government of India originally proposed that occupancy right should attach to all raiyatty land and should be enjoyed by all settled raiyats, nomad raiyats and under raiyats being excluded (*vide* its letter to the Secretary of State for India, dated 21st March 1882, para. 62.) This most revolutionary principle was of course not sanctioned by the Secretary of State for India, who, in his letter, dated 17th August 1882, despatched to the Government of India, thus observes:—"Your proposal, in the first place, annuls the distinction, deeply rooted in the feelings and customs of the people, not only in Bengal, but in most parts of India, between the resident or permanent and the non-resident or temporary cultivator. This, when your avowed intention is to restore to the raiyats their original position and rights, appears to me anomalous and undesirable." Then the Secretary of State proceeds to state how legislation on this point might be made without sacrificing the principle of Act X of 1859, and makes the suggestion that every resident raiyat shall have a right of occupancy in the land which he occupies and pays rent for, and that a resident raiyat shall be one who, or whose ancestor, has occupied any land in the village or estate for 12 years. It was thus that the above sections came to have a place in the said Bill. While every credit is due to the Secretary of State for India for his laudable desire to preserving the long standing distinction between khudkasht and pyekasht tenants, it must however be observed that this distinction is practically done away with in the Bill. The suggestions made by the Secretary of State himself are scarcely sufficient enough to keep the distinction, and of this the Government of India was well aware, for it thus observes in its letter, dated 17th October, 1882:—"Nor do we conceive that our proposal differs more widely "from the principle of Act X of 1859 than that which your Lordship has submitted "for cosideration. That proposal, equally our own, *ignores* (*all distinction based on residence.*" Here it must be observed that the object of the Secretary of State was not to ignore the distinction, although the suggestions he makes to carry out that object has the effect of ignoring the distinction. It is not proposed here to discuss the rights and status of khudkasht ryots. It is a subject on which much can be said from the zemindars' point of view; besides it is admitted on all hands that whatever rights they had, have been lost in obscurity and now it is almost imposible to trace those rights. Mr. Justice Steers in the great rent case observes thus:—"To be a khudkasht ryot at all, implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be a hereditary husbandman. A khudkasht right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a tittle to a tenant to consider himself a khudkasht ryot." Mr. Mackenzie who takes so much pleasure in ridiculing Mr. Justice Steer, admits that "it is perhaps in the present day impossible and useless to attempt to rehabilitate the khudkasht or resident ryot." Then he says some prescriptive test of residence must be adopted, but in his opinion long time is not the essence of khudkasht ryot's title. What is necessary to see is that the ryot "gives reasonable evidence of his intention to cultivate permanently," and that three years is sufficient to raise the presumption of such an intention. So the right which in the opinion of Justice Steer is not acquired in a day, and which Mr. Mackenzie modestly says must take at least three years to acquire, is under the sections of the Bill given to a ryot the moment he touches the land. As to the opinion of Mr. Mackenzie, it is sufficient to quote what Sir John Shore, afterwards Lord Teignmouth, says on this point. Regarding questions of this nature, the opinion of one who wrote his minute only 28 years after the East India Company had acquired the Dewany should be more valued than that of a gentleman occupying the position of Mr. Mackenzie. Sir John Shore in paragraph 389 of his minute of June 1789 given in Vol. I of the Fifth Report thus says of the khudkasht ryot:—"It is, however, generally understood, that the ryots by long occupancy acquire a right of possession in the soil, and are not subject to be removed, but this right does not authorize them to sell or mortgage it, and it is so far distinct from a right of property." But Mr. Mackenzie cites another passage from the minute of Sir John Shore, which occurs in paragraph 225 and is to this effect.—"Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause have a stronger right than others, and may in some measure be considered as hereditary tenants and they generally pay the highest rent." Mr. Mackenzie lays much stress on the words "other" and contends that time is not essential to the acquiring of khudkasht tenure; but he does not explain what the "other cause" is, and

well might he omit to give any explanation of it, for the very affirmation of the existence of some other cause precludes the supposition that mere residence was enough for the conferring of the right of occupancy. The other causes not having been explained or being untraceable, the only ostensible ground whereon the right is known to exist is prescription. It appears from Mr. Mackenzie's quotations that pottahs to the khudkasht ryots, or those who cultivated the land of the village where they resided were given without limitation of period, the reason being that pottahs prescribing time would have been regarded, as Sir John Shore says, as diminishing the force of prescription which had established a right of occupancy in favour of the ryots. It is therefore wrong to say that length of time is not the essence of the right. This length of time was cut down to 12 years by Act X of 1859. Mr. Mackenzie was for shortening the period to three years, and the present Bill swept away time altogether.

VILLAGE.

Sections 25 & 27.—Mr. Justice Field thus remarks in his notes appended to the Rent Commission :—

"The village community, if it ever existed in Lower Bengal, has long been broken up, and the definition of a 'village' would raise insuperable difficulties. Doubtless this was felt by the framers of Act X of 1859, and influenced them to abandon the element 'residence in the village.'"

The definition given by the Bill of the word "village" does not remove the difficulties referred to by Mr. Justice Field. It would create a good deal of confusion. It might happen that the area of two or three villages belonging to different zemindars might be included in a village map of the revenue survey and thus form one village. The result would be that a ryot holding for 12 years ryotty land in a village belonging to one zemindar would acquire right of occupancy in the land of another village belonging to a different zemindar from the moment of his taking settlement of such land. Again the provision empowering a settled ryot in an estate to acquire right of occupancy to all lands held by him in that estate would create great difficulties, specially where large estates are concerned. The select committee are aware of this difficulty. It is submitted that the words "estate and village" in sections 25 & 26 be omitted, and in their place the word "*mauza*" be substituted.

Section 26, Sub-sec. 2.—In this sub-section it is laid down that a ryot should be presumed to be an occupancy ryot until the contrary is shown. In letter No. 54, dated 17th August 1882, already referred to, the Secretary of State condemned in strongest terms the proposal of the Government of India to attach occupancy right to all ryotty lands. According to the Secretay of State such a proposal was against the ancient custom and the existing law of Bengal; yet the Revised Tenancy Bill adopts it in a somewhat modified form. If according to the Secretary of State a provision which lays down that all ryotty tenures are occupancy tenures, is against the customary and settled law of Bengal, then a presumption to the same effect is equally so. Besides it will not be easy for zemindars to rebut such a presumption considering that under the Bill, the holding of lands under other landholders included in the same estate, or in a common village map, or in different estates created since the 1st of January 1853, for a period of 12 years, would confer the status of a settled ryot.

Section 31, Clause (a).—This is a very wide provision. The powers given under it should be clearly defined. Suppose a ryot take land for the purpose of cultivation, can be grow orchard upon it.? It would seem as if under this clause, he could—but this would be injuring landlord's interest, and unduly favoring the ryots. The zemindar is deprived of his half share of the fruits which he could have got had he made settlement of the land for orchard purposes; he could also have got a higher rate of rent if the settlement had been a *Nukdee* one. It may be useful to cite the words of Sir John Shore on this point—speaking of the khudkasht ryots, he says that these "ryots who hold by this tenure cannot relinquish any part of the lands in their possession, or change the species of cultivation, without a forfeiture of the right of occupancy, which is rarely insisted upon and the zemindars demand and exact the difference." *Vide* the minute of Sir John Shore, paragraph 406, pp. 162—63, Vol. I. Fifth Report. One species of cultivation may be changed for another without rendering the land unfit for the purposes of tenancy, but this would be intefering with the rights of the zemindars.

Section 31, Clause (f).—Mr. Reynolds admits that "there are historical grounds for saying that the right was not originally transferable by sale, by gift, or by will, though no doubt the reservation made in 1793 would fully justify the legislature in declaring it to be so transferable now, if good reasons for the change could be assigned." The latter part of the passage is not based on valid reasoning. If the ryots had not originally a particular right, and the creation of it in their favor would affect the landholding class, ought not the latter to be compensated, and ought the right to be created unless there be very cogent reasons for it? It is said that it is for the good of the ryots that the right should be given to them, and that the Legislature is empowered by the reservation clause in the Permanent Settlement Code to confer the right. But there are many things which might do good to ryots, and yet it would not be reasonable or just to bring them about by legislation, specially when such legislation would trench upon the rights belonging to another class of the community. In the memorial submitted to Government from this Division in January last, the clause in question was

discussed, and therefore it is not necessary to dwell upon the subject in these notes. Granting that the Government has the power claimed by Mr. Reynolds in its behalf, it may be asked, is it good for the ryot that he should have this power given him. The arguments adduced by the Rent Commission against the power to mortgage apply with equal force to the power of sale. It is admitted that the ryot is improvident in his habits, that a wedding or a *sradh* turns his brain. "A bad season, sickness, or not uncommonly his own improvidence prevents him from repaying the loan, which is rapidly swelled by interest." Besides, from the Supplement to the *Calcutta Gazette* of July last, it appears that sale of occupancy jotes by Sonthal ryots is bearing disastrous fruits in the Sonthal Pergunnahs; and there is not the least doubt that the evil effects will be felt throughout Bengal and Behar if occupancy ryots are given power of transfer.

Section 31, Clause (h).—"His right of occupancy shall be extinguished."—Why not retain the words of the Bill of 1883—"his right in the land shall go to the landlord."

Section 32, Sub-section 2.—The words "and any other particulars which it is necessary the purchasers should know," should be added after the word "incumbrances."

As a restriction on transfer, it may be provided that no holding should be transferred in respect of which arrears of rent are due.

Section 32, Sub-section 4—The words "on plain paper" should be inserted after the word "application."

The latter part of the sub-section is objectionable. It is difficult to see why all the procedure laid down in the former part of the section should be resorted to, if the ryot is simply made to abstain from selling the land.

Section 34.—The tenant, before he mortgages his holding to a third party, should be required to give notice to the landlord, so that the landlord might, if he so wishes, advance the money on the security of the holding. The notice should state why the money is required, and such particulars as a person advancing money should know, should also be inserted.

Section 35.—The landlord, as was provided in the Bill of 1883, should be given the power to purchase the holding from the donee.

Sections 37—38.—Remarks on "restrictions on subletting" have already been made, therefore it is not necessary to repeat them here.

Enhancement.

Sections 39—50.—The observations made on this head in reply to the letter of the Commissioner of this Division are reproduced here:—

"While the Committee admit that the omission of the gross produce limit is an improvement in the Revised Bill, they at the same time are bound to say that the effect of the improvement is rendered *nil* by the provision which would limit the percentage of increase. This limitation is against the customary law of the country. It has always been the practice that lands when they are in a state of reclamation, are let out at very low rates, but when cultivation is developed, full rates are charged for the same. Again, it appears from the minute of Lord Cornwallis that an assurance was given to the zemindars that they would reap the benefit of an increase which they might expect to derive by inducing the ryots to grow more valuable crops. But the Bill breaks the pledge by imposing an arbitrary limit on the percentage of increase. Again, by fettering the freedom of contract, the Bill prevents ryots, who would have most gladly agreed, in many instances, to an increase beyond the limits contemplated by the Bill, from doing so. All that a Court of Justice need see is whether a ryot is a free agent in any contract of enhancement. If in transactions of more complicated nature, a court can arrive at a satisfactory conclusion on this point, it is not probable that there should be any great difficulty when the contract relates to matters of rent. The Committee fail to see why the legislature which would leave freedom of contract to poor and ignorant coolies when they engage to transport themselves to foreign and out-of-way places, should deny the same in case of ryots (many of whom, it is admitted, are more powerful than the zemindars) who would but gladly agree to an increase of rent in consideration of the profits they derive from their land. The Committee do not approve of the provisions laid down in sections 49 & 50. These would make enhancement practically impossible, regard being had to the already too many restrictions laid down in the previous sections."

In connection with this subject of the percentage of increase, it may be interesting to state how Government deals with its own tenants. The following will show what the rate of Government assessment is:—In reply to a question put by Mr. Woodal in the House of Commons on the 16th of August 1883, to Mr. Cross, the latter gentleman stated thus: "the average percentage increase of assessment effected by the revision is about in the North-West Provinces 14 per cent., in the Punjab 7 per cent., and in Bombay 32 per cent. * * * * * In Upper India, that is, the North-West Provinces and the Punjab, the assessment is a proportion of the rental value of the estate. Under the expired settlement the proportion was two-thirds. Under the revised settlement it is half of the rental value. But the rental has increased so much that the lower proportion now yields more revenue than the higher proportion yielded formerly. There are three reasons for this increase—Extension of cultivation, rise of prices, and improvements such as canals made by the Government."

If the Government is entitled to reap the advantages of the conditions set forth in the concluding portion of the above extract, why should not a private person be similarly entitled.

Section 34, Clause (*b*).—To regulate rents with reference only to prices of staple food-crops would be very unfair to zemindars. The minute of Lord Cornwallis has already been referred to. There occurs the following passage in his minute dated 3rd February 1790:—

"The rent of an estate can only be raised by inducing the ryots to cultivate the more valuable articles of produce and to clear the extensive tracts of waste land which are to be found in almost every zemindary of Bengal." As a matter of fact, sugarcane and other valuable articles are grown in this district on lands producing staple food-crops; in such cases it would manifestly be unjust to the zemindar to make the adjustment of rents depend upon the rise in price of staple food-crops.

The second ground of the present law has been divided into clauses (*b*), (*c*), and (*d*) of the Bill. But these clauses do not exhaust all cases; hence the omission of the latter part of the second ground of the present law, namely the words: "Otherwise than by the agency or at the expense of the ryot" is inexpedient. The Full Bench case of Poolin Behary Sen *versus* Watson & Co., reported in 9, Weekly Reporter, 150 F. B. gives instances governed by the latter portion of the 2nd ground of the present law. There it is said that an enhancement of rent can be had under the clause in question "where the increase has resulted from additional productiveness in the soil arising out of fertilising deposit or from increased facilities for disposing of the produce arising out of the construction of protecting embankments, or the introduction of railways, or the rise of new markets, or the generally increased facilities of communication which are caused by construction of ordinary metalled roads." It may be said that increase due to fertilising deposit is covered by clause (*d*) of the Bill. But what of the other illustrations given? Clause (*c*), section 134 of the Bill would hardly cover such cases, for its application is restricted to tracts where a table of rate is in force, and not to tracts where enhancement would be sought in the ordinary course. Therefore it is unjust to deprive the zemindars of the profit which they might expect to derive in cases not covered by clauses (*c*) and (*d*) of section 43 of the Bill. Such cases could come within the latter portion of the second ground of enhancement in the present law, and it is not fair to omit it in the Bill without inserting in its place any adequate substitute.

Sec. 44, clause (*a*).—Supposing an occupancy tenant pays 1 rupee per bigha, the prevailing rate is Rs. 2 per bigha; then why should the Court be debarred from decreeing more than 1 rupee 8 annas per bigha.

Sec. 46.—Cases might happen in which ryots would willingly pay higher rents if their landlords were to construct a particular work of improvement for instance, the digging of a canal or the raising of an embankment. In such cases it would be an act of grossest injustice to limit the landlord to the rate provided in section 41. As to section 46, sub-clauses (iii) and (iv) of clause (*b*) would not certainly encourage landlord to undertake extensive works of improvement. It would but be a poor requital for all the trouble and expense he had undergone, to be told that the land is not capable of bearing a higher rent, or that the tenant has incurred so much cost for untilising the improvement.

Sec. 49.—The provision about progressive increase is a new one. If a tenure is legally enhanceable, there is no reason why the enhancement should be made to extend over five years till the limit prescribed by law is reached. There never occurred any case in which any such difficulty as contemplated by the section had been felt. No ryot ever made a defence in any enhancement suit to this effect, that he would be most glad to pay enhanced rent demanded, only that the Court might order him to pay the full rate in the fifth year. Of course now that the section is framed, there will be plenty of such defences. In short, this section creates difficulty where there was none.

Sec. 50.—15 years is too long.

Price Lists.

Sec. 52.—Considering the fluctuation of prices and that the same crop that is sold for a certain price in a particular market is sold at a different price in another market only a few miles off from the first one, it will not always be safe to base enhancement on price lists. Besides, any attempt to verify the price lists of the last 15 years is not likely to be successful.

Sec. 53, sub-sec. 1.—No commutation without the consent of both landlord and tenant should be allowed.

Sec. 53, sub-sec. (a)—It is unfair to the landlord that in fixing the money-rent, regard should be had to the average money-rent payable by occupancy tenants for land of a similar description. This will tend to lower the rent which the zemindar used to receive before the commutation; when a long average is taken one does not see the propriety of referring to the money-rent payable by occupancy ryots for purposes of comparison.

CHAPTER VI.

Non-occupancy Tenants.

The principles underlying this chapter, like those of the proceding chapters of the Bill, are opposed to the customary law of the country. The Bill gives the tenants-at-will power which they never enjoyed under the ancient laws of the land. The relation between this class of tenants and their landlord was always left to be governed by mutual contract. In the Statement of Objects and Reasons appended to the Bill of 1883, it is stated that "it is desirable to interfere as little as possible between tenants of this class and their landlords;" yet it is seen that the Bill interferes as much as it can between them. It is observed in the said statement further on that they (the tenants in question) should not be exposed to arbitrary rack-renting and evictions at the hands of their landlords. But where is the proof that these tenants are exposed to such treatment at the hands of their landlords? As to the charge of rack-renting hurled against Behar zemindars, the Committee would refer to the following extract which appeared in a local newspaper on the occasion of the visit of His Honour the Lieutenant-Governor to this district in 1883. "A good deal has been said about rack-renting and the down-trodden and miserable condition of the peasantry in Behar. It would be satisfactory if His Honour were to make personal enquiry on these points by visiting the estates of some of the principal zemindars in Behar; the archives of the Bengal office contain more than one resolution of the time of his predecessor regarding rack-rent in the estate of Kharackpur belonging to the Baneli Raj, but we are informed by Moulvi Abdul Majid, the present Settlement Officer of that estate, who is a Government officer of much experience in settlement works and a native of the district of Burdwan, and also connected with landed property there, that rents in Kharackpur are not higher than in that district. And it is a well-known fact that rents are very low in North Bhagalpur, where there is a demand for cultivators, not for land. His Honour should know something, too, about the extensive estate of Dharampur in the district of Purneah, belonging to Raj Darbhanga, in order to decide whether there is need for a new Rent Law in this division."

Again, the provisions relating to compensation for disturbance which were inserted in the Bill of 1883 for the protection of tenants from the so-called arbitrary evictions were universally condemned. If they had been subjected to evictions, such an opposition to a provision meant for a check to eviction could not have been raised. Are these tenants in a worse position than their brothers in khas mehals? On the contrary, their position is infinitely superior. The opinions given by the officers of Government and other independent persons on the Bill of 1883 do not establish the necessity of legislation for this class of tenants. Of course if the Government wants to give rights of occupancy to any and every person who happens to take settlement of an inch of land, it is at liberty to do so. But why not say this in plain terms; why have recourse to such complicated devices as the provisions relating to compensation for disturbance or judicial lease are in order to create rights of occupancy? The whole of this chapter teems with provisions which are serious encroachments on the rights of the zemindars.

Sec. 60, sub-section 7.—The words "unless he has acquired a right of occupancy" should be omitted. The growth of the right of occupancy should be in abeyance during the period of five years prescribed in the section. Under the Irish Land Law Act, an ordinary tenant holding for 60 years under a judicial lease continues to be a tenant from year to year on the expiration of his term. It would be impracticable on the part of the zemindar to eject the tenant if occupancy right is allowed to accrue during the period prescribed in the section.

CHAPTER VIII.

It is now generally admitted that the rule of presumption laid down in section 4 of the present law and reproduced in Chapter VIII of the Bill works hard on the zemindar. It is now too late to insist on its total abolition, but it should be modified on the lines suggested by Mr. Reynolds. Most of the judicial officers of this district are of opinion that the presumption works very hard on the zemindars, who find it in many instances very difficult to rebut it, and that in the majority of enhancement suits the plea of 20 years' uniform payment is falsely set up by the tenant.

Section 64, sub-section (3).—With regard to section 64 (3) it is necessary to point out that as the presumption of 20 years is applicable to produce rents, it is worthy of consideration what the effect of commutation (section 53) at the instance of the tenant or at the instance of the landlord would be on the power of the latter to seek enhancement in the future. A tenant applies for commutation, but the zemindar is not willing that the produce rent should be commuted in money, the prayer is however granted; when produce rent was paid, the landlord used to benefit to the extent of his share by an increase in produce as well as by an increase in prices; the commutation having been made on the basis of prices and produce as obtaining in the past, would the landlord suffer for deterioration in the value of money, through the commuted rent being deemed to be non-enhanceable in future, or would an enhancement be permitted? If the produce rent had not been commuted, the landlord would have reaped the benefit of increased prices and increased produce. He should not lose this benefit because the grain rent has undergone commutation in money.

PAYMENT OF RENT.

Section 67 (2, 3, 4).—Provision should be made for the exemption of such areas from the operation of these rules, where the ryots and the landlords jointly apply to be so exampted. In the majority of cases the parties find it to their own convenience to settle the instalments in which rent is to be paid, and any inflexible rule framed by Government may work great hardship in such cases.

RECEIPTS AND ACCOUNTS.

These rules will tell hard upon petty landed proprietors. It is absurd to expect that a poor and ignorant Brahmin owing 25 bighas of brohmotter land would be able to comply with the provisions of these sections.

Section 72 (3).—This sub-section should be omitted. If a landlord does not keep a counterfoil, it will be to his own injury when a ryot pleads payment in a rent suit and produces fabricated receipt in support of his plea. This will be sufficient punishment for the zemindar, and he need not be fined at all.

DEPOSIT OF RENT.

Section 73.—The provisions of this section will encourage hostile tenants to harass their landlords with frequent deposits, even where there exists no real ground for making such deposits. The ryot should be required to put in a verified application for making deposit so that he may be prosecuted if the statements made in the application prove false.

Sections 81 & 82.—The provisions of these sections create innumerable difficulties in the way of realizing rents in kind. Of course when a new provision is made, people will not be found wanting to take advantage of it. But the question is whether there is any necessity for these provisions. As far as this division is concerned, disputes as to bhowli rent are not frequent. Landlords and tenants settle these matters among themselves. If any difference arises, of course they go to the Civil Court; but the present provisions do not pretend to make a final settlement of such disputes. On the contrary, it is seen that under section 82 (5) the Collector may refer any such dispute to a Civil Court. Then why all this expense for caryring out the provisions of sections 81 & 82? Let the matter be litigated once for all in the Civil Court; and if necessity arises, the Civil Court may send an Amin to make a division, or depute any other person to carry out its order. As to apprehension of disputes, it may be interesting here to cite the following from the report of Mr. Kemble, Collector of Gya, dated 20th January 1881. "As regards dispute about division of crop, no one has ever raised that objection to me. Disputes arise, no doubt, but I do not think they are so numerous or of so serious a nature as to be made a reason for changing a system."

Section 83.—A penal clause should be added if the tenant removes any portion of the crop before actual division. *Sub-section (4)* is not sufficient for the protection of the interest of the landlord.

CHAPTER IX.

IMPROVEMENTS.

Regard being had to the fact that all substantive improvements are made by the landlords the sections relating to improvements are not necessary. But as giving encouragement to tenants to undertake works of improvement, the Committee would retain the sections, but with modifications. The non-occupancy tenants who have no permanent interest in the soil should not in any case be allowed to make improvements without the permission of landlord. The occupancy tenants and tenants with fixed rates should, when they are desirous of making any improvement, apply to the landlord for permission to make such improvement. In case permission is not given, the tenant may apply to the Collector or any officer to be appointed by Government in this behalf for such a permission. The Collector or such other officer on receipt of the application shall call upon the landlord to show cause within a certain period why such a permission should not be given. If the landlord on the appointed day appears and shows sufficient cause why permission should not be given; the Collector or such other officer shall refuse permission; but if on that date the landlord fails to appear, or after appearing fails to shew any sufficient cause, the Collector or such other officer may grant permission to the tenant to make improvement. But in every case, whether permission is given by the Collector or by the landlord, the tenant should be required to furnish a substantial security to the landlord for any injury or damage that might happen to the land. For instance, the tenant in a fit of zeal might set to constructing a water-course or embankment, or digging a tank or well. After a short time his zeal subsides, or he happens to be short of funds, and he leaves the work incomplete, thus permanently injuring the land. Such contingencies, the Committee think, should be provided for, and the provision given in the Bill empowering the Collector to decide whether a particular work is improvement or not is not sufficient for the purpose stated above.

In this district the principal works of improvement are artificial water-courses and embankments, and these are invariably constructed by the zemindars, the ryots neither having the means nor inclination to undertake the same.

Section 87 (2) d.—When a ryot takes settlement of a land, it is but natural that he would, for the purposes of cultivation, reclaim any portion which was lying waste, or clear the jungle, or construct fences for security of the crops; and to give him compensation for this would simply be absurd—he might as well claim compensation for ploughing or watering his fields.

Section 87 (2) f.—How is dwelling-house an improvement? It does not fall within the list of improvements given in the North-Western Provinces Rent Act. Under the present law as interpreted in a long series of decisions of the High Court, a tenant cannot build without the permission of his landlord; but the Bill gives even the non-occupancy tenant power to build pucca houses without the permission of his landlord. This is highly unjust, and will entail loss on the zemindar who might have given a building lease of that land to another person at a more favourable rate.

Section 91 (1).—Although the word "may" occurs in this sub-section, this section read along with section 46, clause (*a*), makes it virtually compulsory on the landlords to register improvements. It would be very hard upon zemindars if they are required to register improvements made long before the commencement of this Act.

Abandonment.

Section 96 (3).—This section leaves the zemindar completely at the mercy of his tenants. The tenant may go away at any time he chooses; may again come back to claim possession. This of course will be harassing the zemindar and entailing loss upon him. The latter part of the sub-section will be hardly sufficient to protect his interests. Besides the payment of compensation, the recusant tenant should invariably be required to pay a certain sum of money as fine to his zemindar for re-entry, if the section should stand.

Measurement.

Section 99.—Why should not the landlord be entitled to measure his own lands except once in ten years? This is certainly unjust. Occasions may arise when it would be necessary for him to measure the land; for instance, when a neighbouring proprietor encroaches upon his land, or that his own tenants claim more land than what has been originally settled with them. In such cases it may be necessary to measure the lands.

Section 101 (3).—Provision should be made to enable the zemindar to file any objection to the rules, and move the Local Government for the alteration or amendment of any such rules.

Managers.

Sections 102-109.—If the co-owners cannot agree among themselves they have remedy by applying for partition. It would be unjust to appoint a manager at the instance of one or more co-owners against the wishes of the other co-owners. The latter would be but too glad to manage their own shares. These sections interfere with the right of enjoyment of property. If any difficulty is felt by the tenant in the way of paying rent, he may avail himself of the sections relating to deposit of rent. So there is no necessity for these sections. There would be constant friction between the manager and the co-owner or co-owners against whose wish he may be appointed, and the estate would after all go to ruin.

CHAPTER X.

Record-of-right and settlement of rent.

The Committee would remark that there can be no reasonable objection to the provisions relating to the preparation of record-of-rights, provided the expenses be borne by the applicant, or applicants, at whose instance the record is to be prepared, or by the State. As to the particulars given in section 3, the Committee would suggest that in cases of tenure-holders, the description of the tenure might be added. For instance, whether it is a *mocurruree*, *putni*, or any other kind of tenure, or whether it is a tenure so created by reason of an occupancy tenant subletting more than half of his holding; also whether any improvement, as defined in the Bill, has been made on the land or not should be stated, and if any, by whom. As to the procedure laid down in case of disputed entries, it is in the opinion of the Committee rather a complicated and expensive one. It will necessitate on the part of the Government the maintenance of separate establishment, and add to the cost of the parties. All this might be prevented if power is given to the parties, in case of disputed entries, to bring a suit in the Civil Court for the rectification of any entry which they think to be wrong. The Civil Court have in many cases already to decide on many of the particulars stated in section 3; and in cases where personal investigation is necessary, the Court may send an Amin. The record should be amended according to the decree of the Civil Court, or the decree finally passed on appeal, where such appeal is preferred.

The provisions relating to settlement of rent are quite unnecessary. They will in many cases encourage litigation. The revenue officers are vested with large powers. It would

appear that under sub section 3, section 118, a revenue officer can lower existing rent. This is unjust and will tell hard on the zemindars. When the settlement officer comes to a particular area to settle the rents, the ryots are surely to apply to him to get their rents lowered, and this would lead to friction with the zemindars, who on their part would try to get the rent enhanced. It is unsafe to vest execute officers with judicial authority in such matters, especially where there are already provisions in the Bill for enhancement and abatement of rent. The Committee strongly disapprove of this dual procedure which would give concurrent jurisdiction to the revenue officers with the Civil Court in such important matters as settlement of rent, and would ultimately increase litigation and embitter the feelings of the zemindars towards their tenants and *vice versâ*.

Section 118, sub-section 3.—As has been remarked above, the revenue officer can lower existing rent if he thinks the lower rate to be fair and equitable. This is, of course, arming the revenue officer with extraordinary powers. What serious loss it would be to the zemindars if the revenue officer were to go on reducing the rents of entire villages.

Here also, instead of maintaining special Judges, power may be given to parties to get the order of the settlement officer amended, altered, or set aside by the Civil Court.

CHAPTER XI.

The provisions relating to table of rates have been declared by the Local Governmant in its letter dated 27th September 1883 to be unworkable. This chapter should be omitted from the Bill.

CHAPTER XII.

This chapter contains provisions revolutionary in their nature, inasmuch as they materially affect the proprietary rights of the zemindars. The plea for enacting these provisions set forth in the Statement of Objects and Reasons, appended to the Bill of 1883, is as follows:—

"Bearing this in mind, and having regard to the efforts made by landlords in some parts of the country, under the existing law to get into their own hands as large as amount of the ryotty land as possible and convert it into khamar land, it has been thought necessary to make it clear by the definition that the existing stock of khamar land cannot hereafter be increased, and further to enact (section 6) that all land which is not khamar land shall be deemed to be ryotty land, and that all lands shall be presumed to be ryotty land until the contrary is proved.

"In Behar, owing to large extent of the khamar or as it is there termed 'zeraat' land, and the persistent efforts made by the landlords and their lessees to increase its extent, the question is one of cardinal importance."

Two things are alleged in the above extract:—

(1) In some parts of the country, efforts are made by landlords to convert ryotty land into khamar land.

(2) That this practice largely obtains with the Behar zemindars.

Now as regards the first allegation, it is admitted that only in some parts of the country the practice complained of prevails. Then why make the chapter general in its application? The Bill proposes to legislate on the lines suggested by the Rent Commission, but no such provisions occur in the Bill framed by them. Chapter XII lays down some special provisions for Behar; but even that chapter does not lay down any distinction, or make any presumption, as is found in chapter XII of the Revised Tenancy Bill. After giving full consideration to the suggestions of the Behar Rent Committee, the Rent Commission in paragraph 156 of their report thus observe:—"It appears to us that the most important objects of legislation for Behar are to protect the ryots from illegal distraint, illegal enhancement, and illegal cesses, to enable them to maintain their rights of occupancy, and to suppress various modes of oppression incident to the collection of rent in kind. * * * We think that special provisions for Behar contained in chapter xii will, taken with the other provisions of the Bill, effectuate these objects as far as they can be effectuated by legislation." Had there been a dominant practice on the part of Behar zemindars to convert ryotty land into khamar land, it would not have escaped the observation of the Rent Commission. But there is no device in their Bill to prevent a zemindar from lawfully increasing the stock of his khamar land. The definition they give of ziraat land (*vide* section 81 of their Bill) certainly does not go that length. These revolutionary principles were first introduced by the Bengal Government in its Bill submitted to the Government of India (*vide* section 19 expl. iv. clause (f) proviso and section 75 of the Bill). In justification of the introduction of these principles, the Lieutenant-Governor, in paragraph 25 of his letter, dated 27th July 1881, submitting the Bill to the Supreme Government, thus observes:—"Now there are in many estates lands which are recognised as the proprietor's private lands known as khamar, nij-jote, or sir land in Bengal, and as zeraat in Behar. In these lands, under the present rent law, a ryot may not acquire a right of occupancy so long as the zemindar chooses to let him the land only for a term, or year by year. In such lands the zemindar can always prevent the accrual of rights of occupancy without making any special stipulations against this. Naturally, therefore, the zemindar would be glad to have as much of land in his estate as possible classed as khamar or private land. But there is nothing which village feeling resents more bitterly than the absorption of ryotty lands into khamar. So generally is the custom of

the country recognised in respect of such lands, that if a zemindar wants a plot of land in the occupation of a ryot for a garden or a house, he takes a formal sub-lease of it from the occupant, or purchases the right of such occupant, and enters himself in village papers as the ryot (not as zemindar) in respect of such plot or ground. The bold assertion now-a-days of high English notions of proprietary rights makes it, however, desirable to throw the shield of positive law over the ryotty lands of the village, and this has been done in the present Bill." Now this extract goes to show that the zemindar *would be glad* to convert ryotty land into khamar if he could. But any such act is bitterly resented by the people; and so jealous are they of their rights that when the zemindar wants a plot of ground for his house or garden he has to take settlement of it, or purchase it from the occupant, and then to enter himself in the village paper as *ryot*, not zemindar; and that the assertion of high English notions of proprietary rights has rendered the introduction of such a measure necessary. This testimony is of the greatest value, as it shows that as a matter of fact the zemindars do not convert ryotty lands into khamar, but that the provisions are laid down, in order to baffle any such future attempts on their part. Besides in the minutes written by the officials of the Patna Division which are published in the Report of the Government of Bengal on the proposed amendment of the law of landlord and tenant in that province with a Revised Bill, Volume II, pages 228-68, no such allegation is made against the Behar landlords. Thus it has satisfactorily been shown that the justification for chapter xii as given in the Statement of Object and Reason wholly fails. There may be some instances of unlawful ejectment and absorption of the holding into *zeraat*, but unless the practice were to be very general extending over all the districts, it would not be worth the while of the legislature to lay down any special provisions on the subject. This Division is classed with Behar for certain purposes, but the charge of changing and chopping the holdings of ryots and their conversion into khamar lands is not applicable to it.

The Revised Tenancy Bill has omitted some of the objectionable provisions of chapter ii of the Bill of 1883, but it retains in a modified shape the presumption laid down in section 6 of that Bill. Section 138 (2) of the Revised Tenancy Bill lays down that the Revenue officer "shall presume that land is not a proprietor's private land until the contrary is shown." Now it will be necessary to refer again to the Bengal Government letter dated 27th July 1881 from which extracts have been already cited. In paragraph 25 of that letter, His Honour thus observes on the origin of khamar land:—'*Khamar* was the waste unreclaimed or surplus land of the village which the zemindar was permitted to cultivate by contract for his own advantage during the term of his revenue engagement with Government, but which, as cultivators settled on it, became part of the ryotty land of the village. * * * There is no doubt that most of what is now admittedly ryotty land was originally khamar." So it is admitted that all lands were originally the zemindar's khamar or private land, although there is no authority for holding that the moment a ryot takes settlement of such land, it turns ryotty. Next it may be observed that sections 52 of Regulation VIII of 1793 gives absolute power to the zemindar to dispose of the "remaining land" in any way he pleases, meaning lands "remaining over and above the land held by the mokurraridars, istemraridars and dependent talookdars." Lastly, it should be seen what view the Government of India took in 1815 of the powers of zemindars in respect of such lands. In Revenue letter dated 7th October 1815, addressed to the Court of Directors, this observation occurs:—"In like manner, the zemindar in this country, in holding his estate subject to certain restrictions with respect to the right of the resident ryots, does not the less enjoy the power of managing those lands on which no resident ryots are established *in any mode he may judge proper*, of collecting the rents of the whole through what channel he may deem best suited to his convenience, of providing for the cultivation of waste lands, of improving the general condition of the estate, and finally of enjoying the surplus revenue, whatever it may be, after paying the regulated assessment to Government." Now if the Lieutenant-Governor admitted in 1883 that all lands were originally the private lands of zemindars, if the Government of India conceded in 1815 the absolute power of the zemindars over all lands not held by resident ryots, if the Permanent Settlement Code of 1793 gave absolute power of disposal to the zemindars as to these lands, why should the Revenue Officer presume that such lands are not the private lands of the zemindars? Lastly, the definition given in section 138 (1) of khamar lands is opposed, as is shown from the foregoing extracts, to the customary and settled law of the land. If the zemindar is the *malik* of all such lands situate within the zemindary, why should cultivation by him for 12 years be required to give them the character of khamar lands?

CHAPTER XIII.

DISTRAINT.

The committee think that there is no necessity for changing the present law on distraint There are sufficient safeguards in the present law against any abuse of the power of distraint; if they are held not sufficient, more stringent rules can be made. The procedure laid down in the Bill is a cumbrous one and partakes of the nature of a regular suit. First, an application for distraint is to be made, it is to be signed and verified as a plaint, the applicant is to file documentary evidence and is to be examined. All this is preliminary to the admission of the application This lengthy procedure would by its delay defeat the object of distraint. The Rent Commission have not given facts and figures to show in how many instances powers of distraint

have been abused. The Behar Rent Committee originally proposed the abolition of the law of distraint, and it may be interesting to state under what circumstances they did it. Some members were for simplifying and amending the law, but Mr. Gibbon proposed that the law of distraint be entirely abolished. The question put to the vote was whether in case a summary procedure for realisation of rent be extended to Behar, the power of distraint should altogether be abolished; and the majority were for abolition. So it was distinctly understood that a summary procedure was going to be introduced. Now in the Bill there is no summary procedure, and yet the law of distraint is practically abolished as the fetters and restraints imposed upon it would make it altogether useless.

CHAPTER XIV.

Judicial Procedure.

The Committee think that in suits for arrears of rent against ryots other than occupancy tenants, the zemindars should be allowed to sue any number of tenants residing in the same mouzah by means of a single plaint. Further, the Committee would suggest that instead of making it compulsory on the landlord to grant receipts in the form prescribed in section 70 and to keep counterfoils of them, the granting of receipts and keeping of counterfoils in the form prescribed ought to be permissive, and an inducement ought to be held out to landlords to have more frequent recourse to registered kabulyats and grant counterfoil receipts, by allowing them the advantage of obtaining decrees on the very day of filing the plaint on *primâ facie* proof that the balance is due by production of the kabulyat and counterfoil receipts, and by examining one or two persons in support of the claim, and on proof that before the suit was brought a notice had been issued on the tenant, that the arrears were claimed 15 days before the institution of the suit, and that no reply contesting the claim had been received. If, however, in such cases the tenant should contest the claim by the issue of a counter-notice, the Court instead of decreeing the claim should issue a short-date summons on the defendant and decide the case on the date fixed in the summons.

Section 168.—There should always be an appeal from the judgment of the Munsiff, whatever may be the value of the suit.

Section 170 (1).—"Reasonable time"—the time should be specified.

Section 171 (b).—Why should interest be paid on the value? The tenant is ejected through no fault on the part of his landlord.

Section 172 (2).—Express provision should be made in cases where the amount payable by the tenant to the landlord exceeds the amount payable by the landlord to the tenant. In such cases the court should pass a decree for the excess amount against the tenant, and it should be laid down that unless the amount decreed be paid at once, the tenant should not be able to enjoy any of the benefits promised under section 171, clauses (*a*) and (*b*), but be forthwith ejected. At the same time such a provision should not be a bar to the landlord to his recovering the amount decreed by execution or any other means provided by law for the realisation of decrees.

CHAPTER XV.

This chapter contains a most cumbrous and dilatory procedure, which will interfere with the speedy realisation of rent-decrees. The tenure should be sold free of all encumbrances except those that are protected. There is no reason for any change in the existing law on the subject.

Section 186 (c).—Suppose the tenant under section 171 (*d*) remains in possession of the land for more than six months after the decree, any rent due from him for this period should not be affected by the present clause.

CHAPTER XVII.

Contract and Custom.

This chapter proposes to fetter freedom of contract. This is most unjust and unnecessary. By the Contract Act every person of age and of a sound mind is competent to contract. There is no reason why a ryot should be disqualified from contracting. Granting that he is ignorant of his rights, and if left to his own free will may do what is not proper for his interest, still it is not a case for the legislature to interfere; for if the legislature were to interfere in cases of this nature, where would it stop? It would have to dog the steps of every private individual and see that he does nothing against his own interest. The remedy for this state of things is diffusion of education, and not legislative interference. But is it true that the ryots are so ignorant that by contract they are made to forego their occupancy rights? Certainly not. The late Hon'ble Kristo Das Paul in his speech on the occasion of the debate on the Tenancy Bill thus observes:—"The 12 years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of agricultural population of this country. Some estimate it at 90 per cent. &c. In Behar, too, though the ryot does not fully appreciate the right, the right is practically enjoyed by the ryot, as appears from the report of Mr. Finucane."

Section 214.—The tenures called *Sarabadi* and *Hustboodi* which exist in some parts of this district are allied to *Hal Hasili* and *Utbundi* tenures. The characteristic of these tenures is a want of fixity, inasmuch as both land and rent vary every year. Rent is paid per crop at specified rates on the land that yields a harvest, and in some parts a deduction is allowed at certain percentage on the area measured in favour of the tenant. Every year, or rather every harvest, measurement is made, the crop grown is noted down in the khusra paper, and is then transferred on the rent-roll, and rent is charged at rates which exist in the village for the kind of crop which is cultivated. In such cases it is not possible to ascertain the quantity of land or the year's rent which a ryot has to pay until the year is over; and in face of the existence of these tenures, it is hard to see the propriety of the provisions occurring in section 70, which make it imperative on landholders to grant receipts in the form prescribed.

Section 216.—Leaving the incidents of homestead tenures to be governed by custom is a wise provision. The custom relating to such tenancies is, so far as this district is concerned, clear and well-defined, and it is hardly possible that any confusion or dispute can arise regarding the same.

Section 221.—The word "landlord" used in this section should expressly include a manager appointed under section 104.

Section 222.—The provisions contained in section 222 would work with great hardship on shareholding landlords. At present they can sue separately and do all other acts separately, provided the collection of their rent is separate from the other shareholders. The proposed section would work a revolution in the management of coparcenary villages. The result would be a complete dead-lock of work, as it would not be easy for all the shareholders to join in the appointment of a common agent. The existing law as explained in the decisions of the High Court should not be changed.

No. 2085-1075 L R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Officiating Under-Secretary to the Government of Bengal,

To—The Secretary to the Government of India, LEGISLATIVE DEPARTMENT.

In continuation of my letter No. 2013-1041 L.R., dated 4th December, 1884, I am directed to submit, for the consideration of the Government of India, the accompanying papers noted on the margin* containing further opinions on a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill.

* Letter, dated 3rd December, 1884, from the Additional Judge of Bhagulpore.
Letter No. 1200, dated 1st December, 1884, from the Superintendent and Remembrancer of Legal Affairs.

Dated Bhagulpore, the 3rd December 1884.

From—BABOO AMRITA LAL CHATTERJEE, Additional Judge of Bhagulpore,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No. 2431T—R (Land Revenue), forwarding to me copy of a pamphlet by Baboo Mohini Mohan Roy on the procedure sections of the Bengal Tenancy Bill for opinion, I beg most respectfully to submit the following observations.

PART I.

I fully agree with Baboo Mohini Mohan in the general observations which he has made regarding the shortcomings of the summary procedure, and the risk which attends the service of the notice of sale, if such service is left in the hands of the proprietor. It would certainly be better if all questions arising out of such sales could be finally decided between all the parties concerned by a competent and efficient civil court. For certain purposes the Court of the Subordinate Judge of the district would very well do; but I doubt much if the Court of the Subordinate Judge, situate at the sudder station of a district, would be the one most convenient to the parties if all descriptions of tenures of a permanent character were brought within section 194 of the Bill; for tenures of a permanent character are not invariably in all cases large tenures yielding large profits. There are many small tenures of a permanent character situate in the interior of a district, the profits arising out of which are too small to attract the notice of purchasers residing at a distance from the places where the tenures are situate; and if the sales of such tenures were invariably to be held at the sudder station, purchasers from the locality where the tenure are situate, and who are likely to know the value and nature of the properties, would seldom think of attending such sales in consequence of the cost and trouble attended upon a distant journey. This would necessarily affect the price which the tenures would fetch at the sales, to the prejudice alike of the landlords and of the defaulting tenure-holders.

The Court of the Subordinate Judge located at the sudder station of the district will not, in my humble opinion, suit the convenience of the parties in cases of small tenures situate beyond the limits of the local jurisdiction of the sudder munsifee of the district.

If all small tenures of a permanent character be intended to be brought within section 194 of the Bill, the best course would be to select some of our most efficient munsifs, and to appoint them as rent-munsifs in the interior of a district, and to vest them with powers to act under this section, where the amount of arrears due in respect of the tenure is below a certain amount.

It looks very well on paper when it is said that questions arising in connection with the sale of tenures can be finally decided, once for all, when proceedings are commenced before a civil court. Generally speaking summary procedure is defective, only because the investigation allowed under it is short and its scope narrow. I do not think that it is defective because the investigation is conducted by a Collector, and not by a civil court. Summary investigations from their very nature will be defective, whether they are conducted by a civil court or by a Collector. The investigation to be satisfactory must occupy time and embrace all the necessary points. I have some doubts on the point whether the procedure can be short and at the same time satisfactory. The writer sees his difficulty and tries to avoid it.

In section 8 of the proposed draft, the writer says that the court, on receiving a written statement from the tenure-holder, shall appoint an early day for hearing, and try and determine the issues on the appointed day; but that no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in court the amount of the landlord's demand.

I submit that the last clause is unfair to the tenure-holder. I do not see why in equity he should be compelled to deposit the amount of the landlord's demand before the sale is stopped, unless the landlord's demand is proved to be correct. The procedure proposed is here summary, and is therefore unsatisfactory.

Now, supposing that the tenure-holder is unable to deposit the amount of the landlord's demand, and, in consequence, the tenure is sold, and the trial of the issues takes more than 30 days after the date of the sale, but subsequently it is decided that a portion of the arrears claimed is due, and that the remainder is not justly due to the landlord—what is the remedy proposed? So far as I can see, none, for the last paragraph of that section provides that such decision will not interfere with, or affect the sale of, the tenure.

It is quite possible that a small amount of the arrears claimed is due, and that the tenure-holder was, either under a mistake of law or of fact, *bonâ fide* under the impression that no portion of the arrears claimed was due. Is it either fair or equitable to the tenure-holders that the sale should not, under these circumstances, be cancelled if the tenure-holder pays in the amount?

Even if it were to be enacted that the sale would, under such circumstances, be liable to cancelment, would not the risk of the sale being liable to cancelment enter into the calculation of the intending purchasers in regulating their bids? Would not that circumstance tend to lower the price which the sale would fetch?

If one wants to do away with the summary procedure altogether, he must not bring it in when it would suit the convenience of the landlord and affect prejudicially the tenure-holder.

Although the writer calls the initiatory application an application only, it is virtually a plaint in a regular suit, and the question arising in that suit ought to be decided at least by one court before the sale could take place. I therefore strongly object to the last sentence of paragraph 1 of section 8 of the draft.

I have no objection to the proposal for registration of tenures in a civil court.

Section 13.—Five per cent. appears to be too high. All that the purchasers can reasonably claim as compensation is a fair rate of interest. When the tenure-holder or any other person is required to pay within 30 days from the date of sale, 1 per cent. will be a fair compensation to the purchaser. If the landlord and the purchaser be both guilty of fraud, I do not see why a suit for cancelment of sale will not lie.

Section 17 of the draft.—Any person interested in the tenure will not, however, be precluded from bringing a regular suit for compensation within the time prescribed by the Limitation Act. The questions involved in such suits are not unoften complicated, and it may very well be that in many cases the period of two months is not a sufficient time for the collecting of materials necessary for properly conducting such cases.

If, however, such person does apply under this section, and his application is tried on the merits, it is proper that he should not be allowed to bring a fresh regular suit for the same subject-matter.

Section 207 of the Bill must be retained. It is not clear why this section has been omitted from the draft.

I think it proper to observe here that in all cases of arrears of rent due in respect of a transferable tenure, it should be incumbent upon the landlord to proceed against the tenure itself, in the first instance, if such tenure is in the possession of the judgment-debtor.

The draft is in a crude form. If it is approved, it will have to undergo some amendments in its language and details.

The draft does not say what course will have to be followed if the sale of the tenure does not satisfy the landlord's demand. Some provisions are necessary to enable the landlord to put up the defaulter's other properties to sale.

PART II.

The writer calls the application for enforcing the claim of the landlord for rent in certain cases "an application as in an execution proceeding," and thinks that by so giving it a name the procedure will be shortened. My impression is that suits for arrears of rent, in which the annual jumma is admitted or proved by former decrees, are, as a rule, decided within a very short time, and that for such suits no special procedure is needed. I would not, however, quarrel with the writer, if he would be satisfied with calling the plaint an application for execution.

Would the procedure proposed avail the landlord where a question of abatement of rent is raised by the defendant on the ground of diluvion or the like? The decision of questions like these will necessarily take time, and the application for execution will not enable the landlord to put up the ryot's property to sale before these questions are decided.

I have no objection to the proposal to make all rent suits triable by the Court of the Subordinate Judge exclusively, except this, that the cases are numerous in which the amount claimed is small, and which are not contentious, and it will be sheer waste of time of a highly paid officer like the Subordinate Judge if such cases be made exclusively triable by him. Again, the percentage of appeals from the decisions of munsifs, in suits for arrears of rent, where no question of the amount of jumma is involved, is, I believe, very small. I think that, under such circumstances, all suits for rent should not be made exclusively triable by the Subordinate Judge. In my humble opinion, the best course would be to select some of the most efficient munsifs to try suits for rent falling within the pecuniary jurisdiction of the munsif.

Chapter XV of the Revised Bill.—There can be no serious objection to extending the sections contained in the special procedure to execution sales for arrears of rent due by ryots in respect of transferable holdings, so far as they can be applied. But I do not think that any sufficient ground has been made out for omitting the provisions regarding registered and notified encumbrances. The procedure is, no doubt, cumbrous in a certain degree; but the provisions contained in the sections, which the writer of the pamphlet wishes to omit, are intended to serve a useful end, and I submit they ought not to be abandoned simply with the view of shortening the procedure.

No. 1200, dated Calcutta, the 1st December, 1884.

From—C. B. GARRETT, ESQ., Officiating Superintendent and Remembrancer of Legal Affairs,

To—The Secretary to the Government of Bengal, Revenue Department.

Referring to your No. 2426T—R and No. 1662—908LR, dated respectively the 23rd October and 4th November 1884, regarding the Bengal Tenancy Bill, I have the honour to send the report therein called for.

2. Baboo Mohiny Mohan Roy's suggestions seem to me, on the whole, very good, and certainly approach to a successful solution of the extremely difficult problem of how to give the zemindars a simpler and cheaper means of realizing their rents from those tenants who can pay, and wont pay—facilities, which I think it is everywhere admitted, they ought to have without at the same time placing in the less reliable and scrupulous members of the class a weapon which they will certainly abuse to oppress and harass their tenants. The only thing, I fear, is that Baboo Mohiny Mohan Roy, whom I shall hereafter call the author, takes somewhat too roseate a view of the difficulties inseparable from the situation. The first 13 pages of the pamphlet are occupied with introductory matter. I propose shortly to make a few remarks on the matters dealt with therein.

3. I agree with the author in the remarks he makes about summary procedure. Summary procedure is, in my opinion, only an euphemism for a perfunctory and careless procedure. Every summary decision is, in general, pregnant with lengthened "regular" litigation, and such decisions generally serve only to embarrasss suitors and add to the expenses of litigation. If, therefore, a system of registration of tenures is adopted, I trust that the officers appointed to carry it out will be invested with power to hear and decide finally all questions arising under it, and that none such will be open to be contested in any more formal suit.

4. I think also it is a good suggestion of the author that the system should be carried out by officers of the class of Subordinate Judges. It is obvious that, for some time at least, the introduction of a system of registration will lead to a very considerable increase of litigation, and will necessitate the employment of a large number of extra officers. It is, I think, highly desirable that these officers should have had a judicial training.

5. To entrust these duties to officers holding the position and drawing the salary of District Judges would be enormously expensive. In the Subordinate Judges we have an excellent judiciary, who command fully the confidence and respect of the people who are trained to very hard and careful work, and whose numbers might easily be enlarged by selection from the experienced munsifs of the new school.

6. Coming now to the details of the scheme set forth at page 13 *et seq.*, there are certainly some points on which I do not agree with the author. In the first place, it must be remembered that a summary sale for arrears is bringing up defaulting tenure-holders with a very round turn indeed. It would, I think, be a considerable hardship for a tenure-holder to feel that his tenure was liable to be put up to sale once in every three months.

7. It may be argued that this is the measure which the Government itself metes out to the zemindars, to which I can only reply thus—The zemindars in Bengal have got a very cheap bargain, far cheaper than most tenure-holders have; and that when people have got a very cheap bargain, they usually have to pay prompt cash. Instead, therefore, of permitting zemindars to apply for the sale of their undertenures once a quarter, I would propose that they should have this power of summary sale only when the rent for half a year was in arrear. As a matter of administrative convenience, I would allow such applications to be made in the first month of any quarter, but I would permit them only to be made when the zemindar could certify that not less than the rent of the last two preceding quarters was in arrear. Indeed, I think the author himself seems to feel that it is somewhat a hard case, for he says that practically no estate can be put up for sale more than twice in a year.

8. I do not quite follow the reasoning by which the author seeks to establish this proposition, for, inasmuch as such an application can be made in the first month of the quarter, an application may be made on the 1st Bysack. The estate might be lotted for sale on the 28th Sraban; but if the rents for the quarter, Bysack—Assar, were at all in arrear at the end of Assar, I see nothing to prevent the zemindars applying for sale on the 2nd or 3rd of Sraban, and getting it again lotted for sale on the 28th Kartick. If, therefore, before the 28th Sraban the tenure-holder had paid in everything due up to Bysack, he will still find his estate liable for sale on the 28th Kartick. This might be made a means of greatly harassing any weak tenure-holder.

9 I also deprecate the idea of extending the special and summary remedy to demands other than those for the current year. If you make it possible for a zemindar to allow a tenure-holder to get into his debt for two or three years' arrears of rent, and then suddenly to launch the claim on him with a power to sell up the tenure, if the tenure-holder cannot discharge the debt in three months, you permit him to store up a thunderbolt to crush the tenure-holder with. I would therefore strictly limit such special remedies to the recovery of the balances of the current year. It will probably be argued that by this means the zemindar will be forced into litigation for every trifling arrear, and that you will debar him from giving time and showing mercy to the tenure-holder if the latter be in pressure or difficulty. As regards the first argument, I would reply that if the zemindar did put the tenure up for sale for a trifling arrear, he would be very foolish, and the tenure-holder would probably find no difficulty in raising the money. To the other argument, I would reply that tender mercies, which simply consist in giving the tenant time until he is hopelessly involved and then closing on him, are cruel.

10. When a tenant is becoming unable to pay his rent, it is far better that the zemindar should sell him up at once, unless the zemindar intends to see him through his difficulties, which, *ex hypothesi*, the zemindar will not do in his case.

11. As regards the stamp fee leviable upon such application, I think it certainly ought not to be fixed as low as 8 annas. In the first place, 8 annas is not an equivalent for the work to be done: in the next place because, if fixed so low, I fear it might soon grow to be a custom for tenure-holders not to pay unless such an application was made solely in order to acquire by payment into court independent proof that they had paid the rent due. I would recommend that the stamp fee should be fixed at one-eighth of that necessary for instituting a suit with a minimum of 8 annas, but no maximum.

12. *Section IV.*—I agree with the author that the service of notices should be made through the court, instead of, as at present, on the responsibility of the zemindar. I think, however, that such notices should be served at least six weeks before the sale day. If notice was not served until 20 days before the sale day, a tenure-holder might find it very difficult to raise the money to protect his tenure.

13. *Sections V, VI, and VII.*—I have nothing to say on these sections.

14. *Section VIII.*—If summary sales are to be permitted for more than the arrears of the current year, rather say the rent of one year in all, I should most strongly deprecate making it a condition precedent to contesting the zemindar's demand that the tenure-holder should deposit the amount of claim. If not more than the rent of a single year is thus permitted to be realized, I think there might often be cases in which such a condition should be insisted on, that is to say, cases in which the tenure-holder was plainly disputing the claim simply to gain time.

15. I do not think any hard-and-fast rule should be laid down on this point. I think the courts should always have a discretionary power to hear such an objection without requiring a deposit of the amount claimed.

16. *Sections IX, X, XI, and XII.*—These sections call for no particular remark.

17. *Section XIII.*—I approve of the principle of this section, which gives the tenure-holders a sort of *locus penetentiæ* in case he fails to pay the amount of the claim. It will also, as the author points out, enable tenure holders to protect themselves from a ruinous sacrifice of their property by buying it back before the sale becomes absolute. I do not think, however, that there is any necessity for compelling the tenure-holders to deposit 5 per cent. on the purchase-money as compensation to the purchasee for the loss of his bargain. It is not much hardship on a purchasee if he is uncertain for 30 days whether he will get the estate or not, and practically I do not believe that such a condition would in any way deteriorate the value of the property; while, on the other hand, it would certainly be some hardship on the tenure-holder (who presumably would be a man in difficulty) to have to raise so much more on a tenure, perhaps already encumbered up to near its full value. I would propose therefore that the sale should be cancelled on repayment of the purchase-money, expenses, and interest on the whole at 6 per cent. per annum, and, in addition thereto, the payment of the zemindar's claim with expenses and interest subsequently accrued. Purchasers buying at such sales would understand that their titles were, so to speak, "ambulatory" for a month, and this once established it would have, I think, very little effect on the prices obtained at such sales. In one way I fear that this section may not work satisfactorily. Its provisions may have the effect, to some extent, of inducing dishonest people not to pay their rents even after an estate has been lotted for sale, trusting to being able to do so within the 30 days of grace.

18. *Sections XIV to XVI.*—No remarks.

19. I observe that the author entirely omits section 205. In a country where there is so much fraudulent and collusive litigation as in Bengal, it would not, I think, be at all safe not to provide some possible remedy for third parties injured by sales collusively brought about.

20. *Section XVII.*—This section is a slight modification of section 206 of the recent Bill. So far as it goes, it only substitutes an application for the suit permitted by the section. I think it is certainly doubtful whether it is any advantage to the sub-tenure-holder to have his remedy limited to the sale proceeds, and I do not think he will get his remedy more quickly. Whether you call it an application or suit, it must be regularly tried out, and the order of the first court made open to appeal. All things considered, I should prefer to retain section 206 unaltered.

21. I now come to deal with the sections laying down rules for the registration of tenures. Registration of tenures is evidently the keystone of the proposed procedure. The author himself proposes to make it applicable only to talooks which are registered, and if the proposed powers of summary sale were given without this restriction, it would be giving a most dangerous power to the zemindars.

22. I agree with the author that the register he proposes will be sufficient for the purposes of this chapter. But the author has again omitted to provide any method for the investigation of the claims of third parties. It is, I think, a very appreciable danger that fictitious tenures will be registered collusively, and if there is no means provided by which third parties affected by such leases could come in and contest their genuineness, I fear a great many fraudulent and collusive leases would get registered, and much false evidence created, which it would be necessary for the persons affected to institute proceedings to set aside.

23. Especially I think would this be the case in the registration of leases and counterparts. Moreover, the author seems to suggest, at the top of page 24, that all disputed leases and tenures should be excluded from registration. The result seems likely to be that only those tenures will be registered which it is least necessary should be registered, namely, those in which the lessor and lessee are acting in unison, and in which there is consequently little reason to suppose that there will be any willing default in the payment of the rent.

24. It does not seem to me advantageous to introduce a system of partial registration, and if we are to attempt the Herculean task of of registering all tenures and all leases, we ought, I think, to make the registration complete, so that all questions arising with regard to registration, whether disputes between the ostensible parties to the registration, or raised by third parties, may be decided before the tenure or lease is brought upon the register. This will of course make registration a much more troublesome matter, but I see no advantage in an incomplete system of registration, which shall register only documents either admitted, or such that their genuineness cannot be contested, and shall exclude from registration documents about which there is contention.

25. *Section XXIII.*—This section makes it a condition precedent that the parent estate should be registered under the Land Registration Act. Of course in the case of a landlord, if he does not register under Act VI (B. C.) of 1876, he has only himself to blame if he is unable to register his undertenures: the remedy lies in his own hands, but what remedy has the under-tenure-holder, who desires to have his tenure registered against his landlord's wishes in a case where the landlord has not had his own name registered under Bengal Council Act VI of 1876? The question is perhaps of less importance, as I fancy tenure-holders will be forward to have their tenures registered.

26. *Sections XXVI and XXVII.*—I must say that these sections appear to me somewhat one-sided, and wholly in favour of the zemindars. Suppose a zemindar applies for the registration of a tenure, alleging it to be of a specified description. It may be that the tenure-holder may have the most valid objections to the description of the tenure as given by the zemindar, and in fact it may be impossible to permit it to be registered without a contest, nevertheless all the court will enquire will be—

1st, as to the admissibility of the tenure to registration;
2nd, as to the amount of annual rent payable thereupon;
3rd, instalments in which the rent is payable.

Now it is quite possible that on these points there may be no substantial contest, and the consequence will be that the tenure will be registered as a tenure saleable summarily, although the tenure-holder may, with the greatest justice, contest the correctness of the landlord's description in every point except these. This would, I think, be extremely unfair to the tenure-holder. I think the only fair course under such circumstances would be, when there was contention, either not to register the tenure until the dispute was decided, or to register it provisionally on the terms admitted by the non-applicant without prejudice to the applicant's rights to prove the tenure to be of a different character.

27. I now come to discuss the second part of the author's proposals—the procedure to be adopted for a more speedy realization of rent from ryots. The author's proposals seem modelled on the measures which he has already suggested in respect of tenures, substituting for registration a decree of court. The proposals are in themselves, I think, good and practical, that is to say, they would secure the object they aim at, and they are fair enough if they can be fairly worked. There appears to me, however, to be two very serious objections to extending this summary process to the case of ordinary ryots. The first is the vast mass of litigation with which it will flood the courts. Every ryoti holding, before it can be brought under the summary precess, must be made the subject of a suit; and as it will be very much to the interest of the zemindar to be able to put this summary remedy in force against the ryots, it is reasonable to suppose that every ryoti holding will soon be passed through the courts. In the next place, there is another objection, which I shall state roundly and without euphemism. It is notorious that zemindars do not very unfrequently induce ryots to sign kabuliyats or admit jummabundies, and so forth, at rates above those actually paid, promising the ryots that the rate admitted shall not be enforced; and no doubt so long as the ryots are obedient, the rates are not enforced. But if the ryots ever attempt to assert any right against their zemindar, or, as it is blandly put, become rebellious, the kabuliyats and the enhanced rates are promptly demanded, and it becomes extremely difficult for the ryots to establish the true state of the case.

28. The new scheme proposed, involving as it does a judicial decision on the amount of rent payable by every tenant, and the instalments in which it is payable, cannot fail to be an immense temptation to zemindars to resort to practices such as those described above. If, as I apprehend, a mass of suits will be brought against ryots by zemindars in order to detain the judicial decision which is a necessary preliminary to applying the summary procedure to their tenures, it is probable that a considerable number of them will be decided *ex parte* or by confession. As regards the decrees which will be given in these cases, it appears to me that there really is ground for great apprehension whether they will represent rent actually payable by the ryot, or some rates which the zemindars have prevailed on them to admit. It may be said that it will not be difficult for the ryots to rip up the transaction and expose the fraud if the zemindar ever tries to enforce rent at such rates; but the ryot will have to get rid of his own admission in the first place, and practically will, I think find great difficulty in resisting the zemindars' claim. If all cases could be contentiously decided, which is impossible, I should not see any objection to the author's proposals; but, on the whole, it seems to me that things are not yet ripe for the extension of the summary sale procedure to ryoti holding, and, on the whole, I deprecate the proposition. The case of tenure-holders is different; they are probably sufficiently able to take care of themselves; at least to take care that their tenures are properly registered. But in the case of ordinary ryots, I do not think that this could be generally expected, and I think that it is therefore undesirable to introduce the system of summary sales at least at present. I may add that, but for this difficulty on the threshold, I should have been much disposed to accept the author's propositions, and that I see little else to object to in them. I note a few points which occur to me.

29. Referring to provisos I and II, I should not allow this summary remedy for more than the arrears of one full twelve-month, nor would I allow more than a single application in any period of a twelve-month.

30. I understand section IV to mean this, that if any objection is made by the ryot to the zemindar's claim, the proceedings will take the form of an ordinary rent-suit, and no further execution will be allowed until the question at issue has been finally decided.

31. Coming now to the author's criticisms on Chapter XIV of the revised Bill, I agree with him that it is not advisable that a District Judge should have the power of calling for and revising the proceedings of a Subordinate Judge. If the author's scheme of a summary

procedure is adopted, it is certainly very essential that the addition he proposes to make to section 168 should be made. Otherwise it is not very important, as an ordinary rent decree at present decides nothing as to the future rate of rent.

32. *Page 36, Section 163.*—I agree with the author that on the whole it would be best to leave the requirements of the law *in statu quo* as to the descriptive particulars which the plaint ought to contain. I agree with him that if the boundaries and extent of the holding were necessary to be given, collateral issues would be raised needlessly in rent cases, which would only perplex and encumber the suit. I agree with the author also that sub-section "*e*" might be struck out.

33. *Section 166.*—I do not, however, agree with the author in thinking that the courts should not have power to order the payment of a rent decree by instalments.

34 In the case of a ryot indebted, as of any other indebted person, it may be possible for him by care, economy and self-denial to pay off his debt by instalments; it may be absolutely impossible for him to pay it off in one lump. I do not see that the fact that rent is accruing in respect of a subsequent occupation alters the case in either way. I agree with the author that there is nothing to be gained by transferring these enquiries from civil to the revenue courts, and that it is advisable that they should be conducted by the civil court ameens.

35. I have now come to the last chapter of the author's pamphlet. This contains the author's criticisms on Chapter XV of the draft Bill. On the whole, I dissent from the author's views. I agree with him that the sale procedure laid down in that chapter is somewhat cumbrous, but it seems to me that this cannot be helped.

36. At a sale for arrears, either of a transferable tenure or an occupancy holding, it is not sufficient to provide simply for the interests of the head landlord, or even the first tenure-holder. Subletting is so interwoven with the land system of this country that it is absolutely impossible to allow sales of tenures for arrears without providing some sort of security for the numerous under-tenants of different kinds whose interests will be affected by the sale; and considering the number and complexity of their interests, it seems impossible that the machinery for protecting them should be other than cumbrous. No doubt the procedure proposed by the author is simple and more expeditious, but their advantages appear to me to be gained by the sacrifice of the interests of all tenure-holders below the "protected" class. I say "sacrifice," because it appears to me to afford no efficient protection to many classes of subordinate holders who ought to be protected to provide that they can save their tenures by paying up the arrears before sale, or paying them up after the sale with a fine of 5 per cent. *Ex concessis*, these tenure-holders are not to blame; they have paid their own rents. No laches on their part has brought about the sale, and in such circumstances it is, I think, very hard on them to say that they can protect their tenures only by paying up the arrear of rent due to the principal landlord. This may be relatively to the resources of the tenure-holder a large sum, and it may be impossible for him immediately to raise it, in which case his tenure must be inevitably sacrificed. On the whole, therefore, as the simpler and speedier procedure proposed by the author is only detained by a sacrifice of interests which ought to be protected, I think that it is preferable to preserve the more cumbrous, but more equitable procedure laid down in Chapter XV.

37. I do not think I have any more remarks to offer on this pamphlet, which is herewith returned.

Dated 1st December, 1884.

From—Babu Bepin Behari Sircar,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to submit a few copies of a memorial adopted by the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore, and request the favour of your submitting them before the Members of the Legislative Council.

Memorial of certain tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Furreedpore District.

To His Excellency the Viceroy and Governor General of India in Council.

The humble memorial of the tenure-holders of Ramdea, Teetolia, Furreedpore and Beharpore, Sub-Division Goalundo, District Furreedpore.

Most humbly sheweth,—That your memorialists and other persons belonging to the high castes in this part of the country hold tenures, which are called *jotedári* tenures, under the pargana zamíndár.

That many of these tenures are very old, while there are other tenures of comparatively recent dates, which also, resembling the old *jotedári* tenures as regards the class of persons who hold them and the circumstances under which they are held, rank with the orderly tenures.

That many of the tenures mentioned above have no title-deeds to support them, and that even as regards their age and antiquity, it is not easy for the holders of the tenures to adduce sufficient and clear proof in all cases.

That as regards the question of uniform payment of rent for 20 years or upwards, even that is not within the means of many such tenure-holders to prove, as living in thatched houses which are exposed to fire and cyclone and such other accidents, they seldom can preserve all their *dakhilas*.

That notwithstanding the above difficulties, these tenures have remained hitherto undisturbed and intact.

That in fact a strong belief that such tenures are not disturbable has always existed in the minds of all concerned, and that by custom they have been treated as transferable and hereditary.

That the present Tenancy Bill has, however, filled Your Excellency's memorialists with anxiety and alarm as regards the security of the tenures mentioned above.

That while section 51 of the Regulation VIII of 1793 protected these tenures from enhancement, section 6 of the Bill, which is substituted for it, would not protect them unless they were proved to have been in existence at the time of Permanent Settlement.

That again supposing the rent of a certain tenure was liable to enhancement, the present law not having contained any clear provision for the enhancement, the zamíndár hardly thought of taking his chance by going into Court for the purpose; but the Bill in a manner invites the zamíndár to enhance the rent of tenure-holders by declaring his right to enhance such rents almost without limits.

That then again the present law had no provision declatory of the zamíndár's power to eject tenure-holders of any description excepting farmers; but the Bill, by sections 11 and 12 of it, by implication gives this power to the zamíndár in all cases except those in which the permanent character of a tenure will be shown on the face of it by documents, or where such a character will be admitted.

That in cases where the tenure-holder himself occupies any portion of the land included in his tenure, the present custom is to regard the tenure-holder to have, in respect of such lands, at least all the rights of an occupying raiyat; but the Bill hardly makes any provision to recognize this custom, on the contrary, by sub-section (*d*), section 7, it ignores this custom.

That having submitted the above as regards the points on which, as rent-payers, Your Excellency's memorialists feel aggrieved by the Bill, they will, in the next place, mention one or two points to which, as rent-receivers, Your Excellency's memorialists think it their duty to draw Your Excellency's attention.

That Your Excellency's memorialists may not object to occupancy-rights being enlarged and being made general; but your memorialists feel bound to say that as sections 25 and 26 of the Bill stands, they will not only create confusion and chaos, but will be actually suicidal.

That Your Excellency's memorialists can understand that a khudkásht raiyat has rights of occupancy to lands which are included in his khudkásht tenure, that is, in the tenure in which his homestead is situated; but if every raiyat is to have rights of occupancy to every bit of land which he may casually or temporarily plough, this will be a fruitful source of confusion between raiyat and raiyat, and the result will be people will attach no value to the rights of occupancy.

That besides it should be remembered that it very often happens that when a khudkásht holding, with the homestead land appertaining to it, is vacated, the landlord makes a temporary settlement of it, pending the arrival of a new khudkásht raiyat to occupy the holding. Now, if the man with whom the temporary settlement is made be empowered to retain possession of the land when he is asked to make it over to a newly-coming khudkásht raiyat, that is, if he be empowered to refuse to act according to the contract made with him to that effect, the result will be that a few raiyats will monopolize the rights of khudkásht raiyat, while others will be homeless wanderers, and the zamíndárs shall not have it in their power to assist such homeless men.

That as regards the novel rules about enhancement, Your Excellency's memorialists will leave the task of criticising and discussing them to zamíndárs, who will be better fitted to do so.

That Your memorialists will humbly say one word with reference to section 48. This section is meant to give relief in cases in which the preceding sections might operate hardship to raiyats.

That if the legislature has misgivings as to the previous sections operating equitably with all cases, your memorialists humbly submit that the said misgivings should be extended towards the interests of the rent-receivers too.

That Your Excellency's memorialists can assure Your Excellency that there are cases in which the rent is so low as two annas per bíghá or four annas per bíghá. In such cases an increase of 25 per cent. of the rent will be nothing, and a landlord will be cruelly punished for the leniency and kindly feelings which actuated him in allowing the rent to remain so low.

Your Excellency's memorialists venture to submit that in view of such cases, section 84 should be worded so as to leave it to the power of the court to disregard the preceding sections in extreme cases of hardship to both the tenant and the landlord.

Your Excellency's memorialists will humbly pray that Your Excellency in Council will be pleased to consider their humble representations and to redress their grievances as set forth above.

Your memorialists as in duty bound shall ever pray.

(*Signed*) BEPIN BEHARI SIRCAR *and 58 others.*

No. 2091—1077 L. R., dated 10th December 1884.

From—H. H. RISLEY, Esq., Offg. Under-Secretary to the Government of Bengal,

To—The Secretary to the Government of India, Legislative Department.

With reference to the marginal note to paragraph 14 of the report from this Government No. 1906T—R, dated 15th September 1884, on the Bengal Tenancy Bill, I am directed to submit for the information of the Government of India, a copy of the correspondence noted on the margin. I am to observe that the real point at issue was whether the holdings of cultivating ryots who themselves cultivate the land are usually so large as 100 bighas (33 acres) in Behar. The letter No. 98R, dated 3rd December 1884, from the Commissioner of the Patna Division, seems to establish that such holdings are as a general rule less than 100 bighas.

Letter to the Commissioner of the Patna Division, No. 1725T—R, dated 4th September 1884, with endorsement.

Letter from the Commissioner of the Patna Division, No. 98R,, dated 3rd December 1884.

Letter from the Opium Agent of Behar, No. 553, dated 29th November 1884.

No. 1725T—R, dated Darjeeling, the 4th September, 1884.

From—A. P. MACDONNEL, Esq., Secretary to the Government of Bengal, Revenue Department,

To—The Commissioner of the Patna Division.

I am directed to call your attention to paragraph 4 of your Conference Report on the Tenancy Bill, in which the opinion is expressed that a ryot holding 100 bighas (33 acres of land) seldom sublets. That opinion is opposed to the general opinion expressed on the point in other portions of the country; and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration. I am therefore to request that the various district officers may be instructed to make special enquiries on the point. It is hoped that your report communicating to Government the results of these enquiries may be submitted before the 1st December next.

No. 1726T—R.

Copy forwarded to the Opium Agent, Patna, with the request that he will, after consulting with his Sub-Deputy Agents, and after such careful examination of the records of each sub-agency as may be required, report to Government, before the 1st December, whether in the Opium Department the experience is that ryots holding 100 standard bighas of land do usually cultivate the entire holding or sublet portions of it.

No 98R, dated Bankipore, the 3rd December, 1884.

From—F. M. HALLIDAY, Esq., Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1725T.R., dated 4th September last, I have the honour to submit the following.

2. In paragraph 4 of the Conference Report of this Division, on the Tenancy Bill, the opinion was expressed that "a ryot holding 100 bighas (33 acres of land) seldom sublets." With reference to this opinion, the Government have observed that it is opposed to the general opinion expressed on the point in other portions of the country, and seeing that in most districts of Behar population is denser than in the majority of other districts, the opinion of the Patna Conference would seem to need either support or reconsideration, and have directed that the several district officers may be instructed to make special enquiries on the point and report the result.

3. The following is the substance of the reports received from the several district officers on the point:—

The Collector of Patna sends a note on the subject by Mr. Grierson, and states that the information he has received from other sources is to the same effect, the general opinon (in which he agrees) being that few ryots in the district hold so much as 100 bighas, and that, of those who have holdings of such extent, few sublet their lands.

In his note Mr. Grierson points out, in the first instance, that the Collector of Patna did not make such a sweeping statement. He said distinctly "except in the case of dearah lands." In dearah lands, Mr. Grierson says, subletting is certainly common. He still

adheres to the statement made in paragraph 4 of the Conference Report. It is the result of his own enquiries. The Court of Wards' Manager and Moulvie Abdul Jubber agree with him on this point. The reason is that subletting is rare because the landlords take such heavy *salamis*. No doubt, Mr. Grierson continues, in a district where the rent is principally paid in kind, and where the laborers who cultivate and cut the crops are paid by allowing them to take a certain portion of the crop as their share, is is difficult to say when a man ceases to be a laborer and becomes an under-tenant. But the idea of under-tenancy is perfectly well known in the district, and has special names such as *sikmi* or *kurthouli*, and the people quite understand the difference between a *sikmi* tenant and a *jan* or *banihar*, who is allowed to take a fixed proportion of the crop as his pay.

In the case of tenants paying rent in kind, he does not pay them to sublet. The landlord takes generally $\frac{9}{16}$ths of the cleaned grain and the ryot takes the straw, the refuse grain, and $\frac{7}{16}$ths of the clean grain. But this is not $\frac{9}{16}$ths or $\frac{7}{16}$ths of the whole crop, for before division a certain proportion of the whole crop is first set apart for the village gods, village servants, &c. Thus the tenant really gets a little over $\frac{7}{16}$ths (including the refuse grain and straw) and the landlord less than $\frac{9}{16}$ths of the gross produce. This $\frac{7}{16}$ths is the smallest proportion which it will pay a man to cultivate land for, and if he sublet it, the actual cultivator would have to give him something and get less than $\frac{7}{16}$ths himself; no one will take a sub-lease on *bhauli* land, and hence again subletting is rare in the ordinary rice lands in Patna.

Mr. Grierson, as Officiating Collector of Gya, in the same way writes that it is rare in that district for tenants holding 100 bighas to sublet. Land in this district if held principally on the *bhauli* system, and as the landlord gets as rent usually $\frac{9}{16}$ths of the net grain produce (after deducting expenses), it does not pay to sublet, as few sub-tenants would take land which gave them less grain profit than $\frac{7}{16}$ths of the crop. In the Government estates in this district only two instances have come to Collectors' notice. In one case the tenant sublets his land because he had become old and poor and could not manage it himself, and in the other case the tenant did so because he had a very large holding in another village. Mr. Grierson adds that as in the case of *bhauli* holding the labourers are paid a fixed proportion of the crop, it does not require the capital to cultivate it that is necessary in the case of a *nugdi* holding.

Mr. Nolan from Arrah states that he dissented from the resolution of the Conference as to removing from the Bill the presumption as to holdings of more than 100 standard bighas. He has seldom come across holdings of so large a size except where the tenant is an indigo-planter. Known the circumstances of the country, it is almost certain, Mr. Nolan thinks, that where as much as 100 bighas is entered against one ryot's name, he either sublets, or the land has been so distributed among members of his family as to be practically cultivated as several holdings. *Guzashta* tenures of 100 bighas are not very uncommon, and these are almost always sublet in part.

Mr. Norman reports that, except on dearah lands ryots, holding 100 standard bighas and upwards are exceedingly rare in the sudder and Hajeepur sub-divisions; so rare that probably they might be counted on the fingers. The cause is doubtless the pressure of the population and the great competition for land. In the Seetamarhi sub-division ryots of this description are not common, not being found at all in the majority of villages; but a much larger proportion of such holdings occurs there than in the other two sub-divisions.

Ryots with substantial holdings (including the few which amount to 100 standard bighas) very rarely sublet, and in the few exceptional cases where they do so, they have either sublet their whole holdings to indigo-planters on *kurthouli* leases, or have sublet small amounts, from 10 cottahs to 2 bighas, on the *bataya* system, to their own servants for good services rendered, or in lieu of wages. The exception to the above remarks is the case of the dearah lands, where subletting a large holding amounting to 100 bighas is common enough. Considerable portions of such holdings are sublet on annual *bhauli* agreements, frequently to low-caste labourers on condition of services. In this district the subletting ryot is generally the small holder who has to eke out his means by service or trade.

The Collector of Durbhunga reports that enquiries show none of the ryots having holdings of 100 bighas or more have sublet either a portion or the whole of their holding. Not a single ryot of this description who had given a sub-lease could be discovered. The enquiries made by the sub-divisional officers were naturally of a general character owing to the short time available for enquiry. In the main the enquiries made by them support the view held by the Patna Conference.

Mr. Price adheres to the opinion expressed by him at the Conference that ryots holding 100 bighas or more do not necessarily sublet part of their holdings. Subletting is perhaps more common in Lower Bengal than in Behar. The Government presume the prevalence of sub-leases of ryoti holdings in Behar from the existence of density of population, but it is in consequence of this pressure of population that men in direct possession of land in any capacity cling to it tenaciously and are loth to part with it under any circumstances.

Well-to-do ryots sometimers grant small pieces of land to their laborers to prevent their going to other employers, as notwithstanding the pressure of population, demand for labor becomes very great in particular seasons of the year. Ryots who have large holdings and cannot for some reason or other defray the expenses of direct cultivation, let out their lands in whole or in part temporarily in bataya; such cases are, however, rare. *Kurthouli* leases to indigo-planters are an exception to the general rule.

The Collector of Sarun, in the first place, observes that the number of such holdings is surprisingly small. In the large Hutwa estate there are only 14 such holdings, while in other fairly-sized zemindaries there are only a few individual instances. Of the 14 ryot holdings in the Hutwa estate above referred to, two of the ryots are said to have sublet any portion of their holdings; eight of them are reported to themselves cultivate the whole of their lands, while in the remaining four cases the holding is divided by private arrangement between the ryot in whose name it stands and his relatives.

The general consensus of opinion among other zemindars is that a holding of the size referred to is beyond the cultivating means of a single tenant (thus being at variance with the facts stated by the Hutwa Raj), and that unless the members of his own family or other near relations are sufficiently numerous to till the whole land, the holder sublets portion of it, sometimes to his own farm labourers and sometimes at *bhatai* or enhanced money rents to other sub-tenants. Judging from the reports, other than that of the Manager of the Hutwa Raj, which the Collector had received, he is inclined to say that the last is, in practice, the usual plan.

The Collector of Chumparun reports the result of the local enquiries held by him shows that 238 ryots have been discovered (in 15 out of 32 tuppas in the district) with holdings of 100 standard bighas or more. Of these 238 ryots, only 12 sublet. It further appears, the Collector says, that 9 out of these 12 subletting ryots held, until within the last few years, their land as *jaghir birt* or *mokarari* tenures. But the Maharajah of Bettiah having examined their title-deeds, and found them to be defective, resumed their lands as rent-paying, and settled them on favourable terms with the former occupants, some of whom reside in another district. It would appear from these enquiries that of actual cultivating ryots holding 100 standard bighas or more, less than two per cent. sublet their lands in this district.

No. 553, dated 29th November, 1884.

From—W. KEMBLE, Esq., Opium Agent of Behar,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your No. 1726T—R, dated 4th September, 1884, I have the honour to report that I have made enquiries through my Sub-Deputy Opium Agents on the point raised.

From all districts the same report has been received, that raiyats holding as much as 100 bighás as a rule sublet a portion of their holdings, as they found they cannot themselves manage to cultivate such a large area.

A Review of the Procedure sections of the Bill (No. II), and a few Suggestions for the simplification of Procedure, by Bábú Mohini Mohun Roy.

PART I.

ESPECIAL PROCEDURE FOR THE SALE OF PERMANENT TENURES FOR ARREARS ACCRUING THEREUPON.

Rent-suits may be divided into two classes, namely, suits for rent against raiyats, and suits for rent against tenure-holders.

Suits for rent against raiyats are generally for small amounts and in batches of large numbers. It generally happens that there is some common point in each batch of such suits the decision of which practically disposes of the batch. The reason why this is so is that raiyats are seldom sued except when there is ill-feeling between them and their landlord; and then we usually find they form combinations, withholding their rents in a body and resisting their landlord's claim on some common or analogous ground. There is not much execution of decree in this class of rent-suits. In a large proportion of cases the raiyats make peace with their landlord after judgment and amicably pay rents, and then the decrees are let alone. In other cases, where the raiyats hold out, the percentage of successful executions is by no means large. Some well-to-do raiyats are able to pay, and made to pay; of the rest it is commonly found, their good friend the mukhtár, who had volunteered his services against their landlord, had absorded their little substance. They might now be lodged in the civil jail and entertained at the expense of their landlord; but an ordinary Bengal landlord would seldom be so hospitably disposed. He would not care to lay out more money upon his thankless raiyats, but would rather serenely contemplate with great inward satisfaction that he had obtained decrees in a Court of Justice under the British Government. In short, it seldom pays to sue raiyats. When raiyat and landlord fall out, suits have to be brought, and are brought. The process is necessary, and also useful in that it settles some question or point in issue between them, and tends to promote ultimate reconciliation by teaching lessons to, and partially ruining, both; but as a means or machinery for enforcing payment of rent from ordinary raiyats the process is, and will always be, a failure in a financial point of view. If there were no ulterior objects to achieve, a landlord would find it cheaper to forego his rents and let alone his recalcitrant raiyats.

It is widely different, however, in the other class of rent-suits. It does pay to sue tenure-holders,—that is to say, holders of permanent tenures. The rents are comparatively large and

the tenures valuable. The rents of some tenures are realized by summary process under Regulation VIII of 1819, but of the great majority the rents are realized by suit and proceedings in execution. The suits are wholly independent of each other and generally undefended, but there is execution in almost every case which has to be pursued through all stages leading to the sale of the tenure. In nine cases out of ten the amount of the decree is paid up, but rarely before the issue of the sale-proclamation In a few instances sale takes place and then a proceeding or suit for setting it aside invariably follows. This class of rent-suits forms a large proportion of the rent-litigation of the Province. It is unsafe to hazard a comparison in the absence of accurate statistical data, but the writer has always believed that in districts where the relations between landlords and raiyats are not exceptionally strained the aggregate litigation in, and resulting from, the one class of rent-suits is quite equal to the aggregate litigation in, and resulting from, the other class.

Can this litigation be reduced?

Yes, as regards tenure-holders it admits of very considerable reduction. The revised Bill, however, has done very little in this direction. On the contrary, many little things and formal matters have been invested with undue importance and made the *nuclei* of litigation wholly unknown before. There is a great deal of "pomp and circumstance" in the programme of the Bill. It seems that the ordinary civil tribunals are not sufficient, and the following high functionaries will take part in the administration of justice between landlord and tenant —

(1) His Honour the Lieutenant-Governor (section 130);
(2) special judges (section 115);
(3) special revenue-officers (sections 44 and 110);
(4) the Collector of the district (section 195);
(5) the Board of Revenue (section 129).

But the country does not care for a pageant. What the country requires and cares for is that justice between landlord and tenant should be efficiently administered at the least cost and trouble to them and at the least cost to the tax-payer. The framers of the Bill do not seem to have been fully alive to the importance of simplifying procedure and relations between the two parties they are legislating for. Their Bill, certainly, has a tendency the other way, and has rather complicated and embroiled what it ought to have simplified. It is calculated to promote and increase litigation, and increase of litigation means increase of perjury.

But there is little use in making general charges. The writer will now proceed to specifically point out what is faulty in the procedure sections, and how they might be framed. He will commence with the procedure for enforcing payment of rent from holders of permanent tenures. If a short and simple procedure be found for this class of rent claims, it will greatly reduce the rent-litigation of the province and be a boon to both landlord and tenant. By a short and simple procedure the writer means a procedure which, possessing the qualities of shortness and simplicity, should at the same time be a really efficient one for finally and effectually determining all matters or questions arising, or likely to arise, between the parties to the proceeding, and should leave no room or pretext for a future regular suit. A mere summary procedure is objectionable, because it does not really shorten litigation, but is often the prelude to lengthy and protracted litigation. Our Statute-book at one time was full of summary procedures, but most of them were swept away by the memorable Acts of 1859. We have now remaining Regulation VIII of 1819, which, it must be confessed, has worked very successfully. The secret of this success may be traced to the fact that, under the *in terrorem* process of the Regulation, patnídárs generally pay up their rents and very few sales take place—scarcely one in five hundred cases. If the sales were more numerous, there would soon be an outcry for amending the Regulation. Anybody who has studied the law literature of the country will readily understand what a Regulation VIII sale means. It means a heavy and harrassing suit for setting aside the sale which is fought pertinaciously through all the Courts and all the stages of appeal. Almost every Regulation VIII sale is followed by such a suit, and our Law Reports teem with cases of this class. The service of the notice of sale being left to the zamíndár, there is no presumption that there has been proper service; and the defaulting patnídár, who generally has some influence over his tenantry, can bring any number of them and his own amlá to swear to non-service. The purchaser, on the other hand, takes prompt action for obtaining possession, and tries to bring as many of the resident tenants under his control as he can. The zamíndár, who has to pay costs and refund the purchase-money in the event of the sale being set aside, generally sides with the purchaser; but he cannot do much to influence the result. He brings his peon, and sometimes a second person as having accompanied the peon, to swear to the service of notice; but the issue chiefly depends upon the testimony of the resident tenants. Here the fight is between the defaulting patnídár and the purchaser, and each side produces a long array of witnesses to outswear his adversary on a single question of fact. A great deal of doubt and uncertainty hangs over the result, and it is an even chance with any sale under Regulation VIII whether it would stand good or be set aside. This state of things necessarily enters into the calculation of a purchaser and influences the price; and the low price fetched becomes again an incentive to the defaulting patnídár to sue for the reversal of the sale. Curious points of law sometimes crop up in such suits. In one case, reported in 2 Weekly Reporter, page 188, the point was raised whether a tailor was a "substantial person" within the meaning of section 8, Regulation VIII of 1819 (section 196 of the revised Bill), which requires that the serving peon shall obtain the signatures of three substantial persons residing in the neighbourhood in attestation of the service of notice. Two

learned Judges of the Calcutta High Court held than a tailor was not a "substantial person" probably upon the principle that nine tailors make a man, although this obvious ground is not specially mentioned in their judgment.

The writer has studied the subject long and carefully. He begs to offer, for the consideration of the legislature and the public, a draft of an especial procedure for the sale of permament tenures for arrears, in lieu of the sections contained in Chapter XVI of the revised Bill. This procedure will apply to permanent tenures of every decription and all matters or questions arising between the parties will be finally determined thereunder as in a proceeding for the execution of a decree. Its outline is as follows :—

1. Any permanent tenure may be registered on application made either by the landlord or the tenant to the Court of the Subordinate Judge of the district, who shall prepare and keep a register for this purpose and enter therein the amount of annual rent, the instalments in which it is payable, and other particulars. Registration is left optional and not made compulsory.

2. Application may be made to the Subordinate Judge for the periodical sale of a tenure registered as above for arrears accruing thereupon. Registration of a tenure in the manner aforesaid in a Civil Court has practically the same effect as a declaratory decree, that the tenure is liable to pay as annual rent a certain amount in certain instalments. Any question of payment that may be raised by the tenant shall be tried and determined by the Court as in an execution-proceeding.

3. The service of the notice of sale shall be made by an officer of the Court and not left to the landlord.

4. When a tenure is sold, the question whether the sale shall be confirmed or set aside shall at once be determined and finally set at rest.

5. When a sale is confirmed, all claims for compensation by under-tenants for the avoidance of their under-tenures, and other questions relating to the distribution of the surplus sale-proceeds, shall be tried and determined by the Court as in the case of an execution-sale.

The above sketch is a very bare outline of the scheme. The writer hopes every reader who takes an interest in the subject will carefully go through the sections in the draft, and the notes appended thereto explanatory of their objects and reasons. It will not be more than an hour's reading, whech it has cost many days to the writer to think out and put into presentable shape.

One essential feature of the scheme is that everything should be done by the Civil Court, and done once for all. The acts being of a judicial nature, they would be more efficiently performed by the Civil Court than by the Collector of the district. His functions are multifarious and leave him little spare time. If you give him extra work, it is just possible that it may be ill-done, and may at the same time act like the proverbial last straw upon the camel's back. Act X of 1859 invested him with jurisdiction to try suits between landlord and tenant. The experiment proved a signal failure. The Collector's decision never did, and never will, inspire confidence. There is another very serious objection to his being entrusted with judicial functions in any class of cases between landlord and tenant. You cannot give him power to decide finally. His orders and decisions will necessarily be open to revision in a civil suit, and the same work will have to be done over again in the Civil Court to the great cost and harrassment of the parties. This was the state of things before 1859. The Collector tried summary suits for rent under Regulation VII of 1799, and held summary sales of patni taluqs under Regulation VIII of 1819. Regulation VII of 1799 has been repealed, but the Collector continues to exercise the power of holding summary sales under Regulation VIII of 1819. The evils and defects of a mere summary procedure have already been pointed out, and they would be greatly aggravated if it were, without large modifications, extended to the other classes of permanent tenures. As our special procedure is not a mere summary procedure, but one under which all matters in contest between the parties would be finally decided, it follows that the Civil Courts alone could be entrusted with jurisdiction under the said procedure. But it must be a Civil Court possessing the following qualifications :—

(1) that it is presided over by an experienced Judge;
(2) that it possesses a record-room;
(3) that it has a public treasury close at hand.

The Court of the Subordinate Judge may fairly be said to possess all these qualifications. It is true he has not generally a separate record room of his own, but shares that of the District Judge. But this may be easily set right by allotting him a separate room in the court-building for his records. The Court of the District Judge does, no doubt, very well answer to our description; but the machinery is too costly to be put to such ordinary use. An Additional District Judge, if required, would cost three times as much as an Additional Subordinate Judge. Besides, according to our especial procedure, the services of the District Judge should remain available for certain purposes of appeal and general supervision. The Court of the Subordinate Judge, which is the principal Court of original jurisdiction in the Mufassal and commands general confidence, may safely be trusted to exercise jurisdiction under the especial procedure. It will involve a slight increase of ministerial establishment, and, in some districts, it may necessitate the appointment of an Additional Subordinate Judge; but this outlay will be counterbalanced by saving one or two extra Munsifs in each district, for the special procedure

will greatly reduce rent-litigation, and it may be confidently affirmed that two years after its passing there will scarcely be any suit for rent against a tenure-holder.

The writer will, in a future paper, review the other procedure sections of the revised Bill, and will now, without further preface, introduce the reader to—

A Draft of an Especial Procedure for the Sale of Permanent Tenures for Arrears accruing thereupon (in lieu of Chapter XVI of the revised Bill).

Section 1.—If default is made in the payment of the rent due in respect of a tenure registered under this Act in the manner hereinafter provided, the landlord may, in addition to any other remedy given him by law, apply by petition in the Court of the Subordinate Judge for the sale of the tenure in accordance with the rules contained in the following sections of the chapter.

NOTE.—This is section 194 of the revised Bill slightly altered.

Section 2.—Such petition may be presented four times in the year, during the first month of each quarter, shall be duly verified and shall contain the following particulars:—

(1) name, description and address of the landlord;

(2) name, description and address of the tenure-holder;

(3) name of the tenure, its annual rent and registry number;

(4) name of the village and thana in or adjacent to which the tenure or a part thereof is situated, and where the notice of sale shall be served;

(5) specification of the balance due up to the end of the last preceding quarter;

(6) Statement of the instalments of rent and other demands (for example, public cesses) recoverable as rent, payable during the current quarter and up to the date of sale;

(7) prayer for the realization of the aggregate amount with interest and costs by the sale of the tenure.

Proviso I.—No such petition shall claim rent at a higher rate than that entered in the Register.

Proviso II.—No such petition shall include arrears of rent barred under the rules of limitation contained in Schedule IV of the Act.

Proviso III.—No such petition shall be entertained unless it shews that a balance for the period preceding the commencement of the current quarter exists at the date of the petition against the tenure-holder.

NOTE.—The sales were half-yearly under Regulation VIII of 1819. The reason for making them quarterly is that it will distribute the work of the Courts more evenly and prevent a rush at certain seasons.

Under Regulation VIII of 1819 petitions were presented on the first days of Baisakh and Kartik, just one month before sale. Petitions may under this procedure be presented on any day during the months of Baisákh Sraban, Kartik and Magh, from three to four months before sale. The object of making this change is to allow ample time to the Civil Court to examine the petitions, to issue and serve the requisite notices, and to determine before the day of sale any question of payment that may be raised by the tenure-holder. It should be noted, however, that although petitions for sale may be presented during the first month of each quarter practically a tenure cannot be proceded against oftener than twice in the year, for a proceeding commenced in one quarter will run into the next, and prevent a second petition being put in until a fresh arrear shall have accrued at the end of the next quarter.

Under Regulation VIII of 1819 petitions could be made only for the rents of the current year. This provision was made at a time when the limitation for a civil suit for rent was twelve years. The period of limitation is now three years—and short enough. There is no object now in prescribing a different and shorter period of limitation for petitions under this chapter. Suitors ought not to be compelled to resort to a Court of law more frequently than they consider it necessary or convenient. Under Regulation VIII of 1819, if the patnidar was in balance for a few rupees at the end of the year, the landlord was obliged to institude proceedings at once or to forego the summary remedy altogether. This is found extremely inconvenient.

There is one very important point for consideration in connection with this section, being a question of judicial finance. A petition in the Subordinate Judge's Court ordinarily bears a court-fee stamp of eight annas. Should a heavier stamp-duty be imposed upon petitions under this section? The writer believes that the eight annas stamp-duty will be sufficient to cover all additional expenditure; but, if it be deemed necessary to impose any special stamp-duty, it should be one-fourth of the stamp for plaints, with a maximum limit of ten rupees and a minimum limit of eight annas.

Section 3.—The days for the sale of tenures under this chapter shall ordinarily be the twenty-eighth day of the month following each quarter of the year during which the petition is presented; but if the twenty-eighth day of the month be a Sunday or a close holiday, the sale shall take place on the next open day.

NOTE.—The sale days will be the 28th Srában, the 28th Kártik, the 28th Mágh and the 28th Baisákh respectively, for petitions presented during the month of Baisákh, Srában, Kártik and Mágh.

The sale should take place during the first month of the next quarter and the title of the purchaser date from its commencement. This will prevent any complication of account between the landlord, the out-going tenure-holder and the purchaser. The twenty-eighth day of the month has been selected as allowing ample time for the service of notice and trial of any questions that may be raised by the tenure-holder, and also as approaching closely the well-known sale days under Regulation VIII of 1819.

Section 4.—On the presentation of the petition, the Court shall register it, appoint a day for the sale in accordance with section 3, and, on the payment of costs by the petitioner,

cause to be served and affixed in conspicuous positions at the following places, not less than twenty days before the day appointed for sale, notices for the sale of the tenure:—

(1) in the court-building;
(2) at the dwelling-house of the tenure-holder;
(3) in the village in or adjacent to which the tenure or any part thereof is situated;

Provided the Court, instead of proceeding as above, may, at its discretion, return for amendment or reject the petition, if it is not framed in accordance with section 2 or if it is in contravention of proviso III of the said section.

NOTE.—A form of the notice should be given in a schedule. Among other particulars it should contain, for the information of the tenure-holder and the public, sections 6, 7 and 13 quoted *in extenso*.

Section 5.—On a return being made of the service of notice, the Chief Ministerial Officer of the Court shall forthwith take the affidavit of the serving peon and make a report in each case If there shall have been no proper service in any case, the Court may order re-service of notice, if there be time for re-service, or stop the sale.

Section 6.—The tenure-holder may at any time before sale pay into Court the arrears due up to the date of payment with interest and costs. Upon such payment being made the Court shall record a proceeding and stop the sale of the tenure.

Section 7.—If the tenure-holder desire to contest the demand made in the petition, he shall within fifteen days of the service of notice file in Court a verified written statement of his case, together with all receipts and other documentary evidence in support thereof; but the Court may, upon good cause shown, allow such written statement to be filed after fifteen days of the service of notice.

Section 8.—The Court on receiving a written statement from the tenure-holder as aforesaid shall appoint an early day for the hearing of the case, give notice of the same to the landlord and try and determine the issues between them on the appointed day; but no sale shall be stayed by reason of the pendency of such trial, unless the tenure-holder deposit in Court the amount of the landlord's demand.

If the Court decide that there was no arrear due at the date of the petition, it shall dismiss the petition and stop or cancel the sale of the tenure, as the case may be.

If the Court decide that any part of the arrear claimed was not due, or that the tenure-holder has established no case for reducing the arrear claimed, it shall record its finding and reduce or uphold the landlord's demand accordingly. Such decision will not interfere with or affect the sale of the tenure.

NOTE.—See section 198 of the revised Bill.

Section 9.—The decision of the Court under the last preceding section shall be final, if the amount in dispute between the parties do not exceed Rs. 500. If the amount in dispute exceed Rs. 500, an appeal shall lie as an appeal from a decree to the District Judge or to the High Court, as the case may be.

NOTE.—The matters in dispute between the parties will thus be finally determined.

Section 10.—At the time of the sale, the tenures, with the exception of those which shall have been exempted from sale under any of the preceding sections shall be successively called up according to the order of the petitions for sale and put up to sale by public auction.

No lot shall be withdrawn from sale without the consent of the landlord, unless the whole amount of the arrears with interest and costs shall be paid into Court or to the landlord by the tenure-holder or any person who possesses an interest in the tenure which would be voidable upon such sale.

The sales of the tenures shall be continued from day to day until all the lots shall be sold.

Section 11.—Every one except the tenureholder shall be free to bid at such sale. The officer conducting the sale may refuse to accept a bid, unless he is satisfied that the amount required to be deposited is in hand for the purpose or will be produced within two hours.

NOTE.—Section 201 of the revised Bill.

Section 12.—Fifteen per cent. of the purchase-money shall be paid immediately after the lot is knocked down, and the remainder of the purchase-money on the eighth day.

If the landlord becomes the purchaser, he may set off the amount due to himself against the purchase-money.

If the fifteen per cent. is not paid in cash or Government securities within two hours of the sale, the lot shall be re-sold on the same day.

If the remainder of the purchase-money be not paid on the eighth day notice of re-sale to take place on the tenth day, shall be given on the following day by proclaiming the same by beat of drum through the bazar of the sadr station.

The lot shall be re-sold on the tenth day, as notified, at the risk of the first purchaser, who shall forfeit the deposit of fifteen per cent. and be further answerable for any sum in which the proceeds of the second sale may be short of the previous sale; such deficieney to be levied by the process for the execution of decree.

The forfeited deposit shall be applied to defray the expenses of the sale, and the surplus shall be credited to Government.

NOTE.—The second paragraph of this section enables the landlord, if declared purchaser, to set off the amount due to himself against purchase-money as in execution-sales. With this exception the section is section 201 of the revised Bill re-produced.

Section 13.—At any time within thirty days of the sale, the tenure-holder, or any person who possesses an interest in the tenure which would be voidable upon such sale, may pay into Court the amount due to the landlord, together with costs and interest and a sum equal to five per cent. of the purchase-money.

Provided that where the landlord is the purchaser the tenure-holder shall not pay five per cent. compensation on the amount which the landlord has set off against the purchase-money.

Upon such payment being made, the Court shall cancel the sale and forthwith refund to the purchaser that amount of the purchase-money, together with five per cent. on the said amount as compensation.

If no such payment be made, the Court shall, on the expiration of the time allowed therefor, declare the sale to have become absolute, and grant a certificate to the purchaser specifying the tenure sold, and stating that the purchase shall have effect from the commencement of the quarter.

Except as provided above, no sale under this chapter shall be cancelled or set aside by suit or application; but nothing herein contained shall debar the tenure-holder from obtaining equitable relief or damages against his landlord on proof of fraud in a civil suit or against any other person party to such fraud.

NOTE.—This section introduces a very important change. The evils of a future civil suit to set aside the sale have already been pointed out. The Code of Civil Procedure enables a judgment-debtor to set aside an execution-sale upon proof of two things, namely:—

(1) that there was material irregularity in publishing or conducting it;

(2) that he has sustained substantial injury by reason of such irregularity.

This last clause has been interpreted to mean that the property has been sold at an inadequately low price. The proceeding for setting aside the sale, which has to be commenced within thirty days and is generally brought to a speedy conclusion, is not so costly and harassing as a regular suit. But if we examine the principle of such proceedings and suits, it will appear that they rest upon a purely artificial basis. The purchaser is dragged into this litigation, which turns upon the service of the notices of sale and the market-value of the property sold, and in which there is commonly a great deal of perjury on one side or the other. It is intelligible that the debtor's property should not be sacrificed, and that a sale should be set aside which involved a sacrifice of the property. But then, why render it necessary for the debtor to prove non-service or irregularity in the publication of the sale and raise an issue so prolific of perjury?

The object of the provisions made in this section is to relieve the tenure-holder of the necessity of proving irregularity and to put him upon practical proof of inadequacy of price. It is by no means easy to ascertain the exact market-value, which varies from ten to twenty per cent., according to circumstances and according to the necessity of the seller and the eagerness of the buyer. It cannot be said that a property has been sold at an inadequate price which has been sold within ten or twenty per cent. of the price at which it can be sold under private contract. If the price fetched at auction be really inadequate, the tenure-holder ought to be able to raise money within thirty days by mortgage or sale so as to be able to pay five per cent. as compensation to the auction purchaser. The tenure-holder, again, ought not to get the sale cancelled without paying up the arrears due to the landlord. Thus we give the tenure-holder an opportunity of recovering his property, without lawsuit and perjury, at a cost to himself of five per cent. upon the purchase-money, and deprive him of the questionable advantage of instituting a suit or proceeding to set aside the sale and spending ten times as much money on a doubtful issue.

There can be no doubt that the purchaser ought to be fully and sufficiently compensated for his risk, trouble, expense and detention of money. This should be fixed at not less than five per cent. upon the purchase-money, and not left to the discretion of the Court. Both the tenure-holder and the auction-purchaser ought to be certain about terms upon which a sale might be cancelled. Purchasers will readily come forward if the law secure them five per cent. upon their money without dragging them into a costly and harassing litigation. In short, purchasers should not receive shabby treatment, as such treatment will ultimately injure the tenure-holders themselves by deterring people from purchasing at such sales.

Section 14.—The purchaser of a tenure under this chapter shall acquire the tenure with power to avoid, in the manner prescribed by section 184 for the avoidance of encumbrances, all liens, sub-tenancies, easements and other rights or interests created in the tenure by the tenure-holder or any of his predecessors in interest or any person claiming under him or them, except—

(*a*) a right of occupancy;

(*b*) a right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; or

(*c*) any right or interest created under a power expressly conferred by the written instrument by which the tenure was created.

NOTE.—Section 202 of the revised Bill.

Section 15.—The purchaser may apply for delivery of possession, and the Court shall thereupon put him in possession of the tenure in the same manner as in the case of a sale in execution of a decree.

NOTE.—See section 203 of the revised Bill,

Section 16.—The provisions of section 188 and, if the person making the payment is a tenant inferior to the tenure-holder, the provisions of section 189 also shall apply to payments made under section 10 or under section 13 by any person who possesses an interest in the tenures which would be voidable upon the sale thereof.

NOTE.—Section 204 of the revised Bill.

Section 17.—When a tenure has been sold under this chapter, any person having an interest therein which is voidable upon such sale may within two months of the date of the sale apply to the Court to be paid compensation out of the surpuls proceeds of the sale, if any :

Provided that no tenant inferior to the tenure-holder shall be entitled to make such application, if at the time of the sale any arear was due from him.

NOTE.—This is s ection 206 of the revised Bill slightly altered. There is no necessity for separate suits in respect of the claims to the surplus sale-proceeds. They may be dealt with by the Court on application, as in the case of an execution-sale.

Section 18.—When any day specified in the chapter is a Sunday or holiday, anything required or authorized under this chapter to be done on that day may be done on the next following day, not being a Sunday or holiday.

In this chapter "quarter" means a quarter of the agricultural year, each quarter consisting of three months reckoned from the commencement of the year.

Rules for the Registration of Tenures.

Section 19.—The following registers shall be kept in the Court of the Subordinate Judge :—

(1) a general register for each parganá of permanent tenures situated therein :
(2) an intermediate register for each parganá of changes affecting entries in the general register ;
(3) a register for each parganá of leases creating permanent tenures or qualifying the terms thereof ;
(4) a register for each parganá of counterpart leases creating permanent tenures or qualifying the terms thereof.

NOTE.—Of all local divisions, parganá divisions are the best known and least subject to change. The name of the parganá occurs in every lease and every rent-receipt. For facility of reference, some division of the registers is necessary, and division according to parganá seems to be most suitable. Thánás and sub-divisions are subject to frequent changes and unsuitable for our purpose.

Divisions according to class of the tenure will be attended with great difficulty. There are tenures which will not come under any class. Changes occur also in the class of the tenure, for example, a darpatni is commonly a tenure of the second order, but becomes a tenure of the first order on the proprietor purchasing the *patni*.

Section 20.—In the general register of permanent tenures the following particulars shall be entered :—

(*a*) name of the parganá ;
(*b*) serial number of the tenure ;
(*c*) name and address of the landlord ;
(*d*) name and address of the tenure-holder ;
(*e*) name by which the tenure is known in the landlord's papers ;
(*f*) the amount of annual rent ;
(*g*) the instalments in which the rent is payable ;
(*h*) name of village and thánás in which the tenure is situated ;
(*i*) reference to the register of leases and counter-leases ;
(*j*) reference to entries made in the intermediate register after the preparation of the general register.

NOTE.—The above particulars will be quite sufficient. People should not be troubled for particulars not necessary for the purposes of this chapter.

Section 21.—In the intermediate register all changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars shall be recorded in a convenient form.

Section 22.—In the register of leases and counterpart leases, the following leases and counterpart leases relating to tenures registered under this chapter shall be entered and authenticated by the seal and signature of the Subordinate Judge :—

(*a*) leases and counterpart leases which have been registered under any law for the time being in force for the registration of documents ;
(*b*) leases produced by the tenure-holder which shall be admitted by the landlord or correspond to the counterpart lease produced by him ;
(*c*) counterpart leases under similar conditions ;
(*d*) leases and counterpart leases found to be genuine by a judgment of the Civil Court binding upon the landlord and tenure-holder ;

and no others.

Such registers shall be "public records kept in British India of private documents" within the meaning of sub-section 2, section 74 of the Indian Evidence Act, 1872.

NOTE.—A register of this description is greatly needed. It will save time and trouble to the Court and to the parties, who will be relieved from producing and proving their documents in every rent-proceeding. It will afford protection to the heirs and transferees of both landlord and tenure-holder, who cannot always obtain the original documents. This register, together with the general register of tenures, will offer full and reliable information to intending auction-purchasers, who need not now buy in the dark.

But care should be taken to exclude spurious documents. The opportunity of registration would be eagerly seized to get in spurious leases and counterparts. If the Court were to go into evidence in the case of each document, it will open up an extensive field of litigation. The Court need enter only such documents as are of the descriptions mentioned in the section and undisputable.

It may be observed that the registration of leases and counterparts is not absolutely necessary for the purpose of registering tenures. Documents which are disputable may be excluded without producing any difficulty or incongruity.

Section 23.—Every landlord, being a proprietor, whose name has been registered under the Land Registration Act, 1876, and every landlord, being a tenure-holder, whose tenure has been registered under this Act, may apply for the registration of all tenures held under them. And every tenure-holder, whose landlord is a proprietor registered under the Land Registration Act, 1876, or whose landlord is a tenure-holder registered under this Act, may apply for the registration of his tenure.

NOTE.—Registration should not be made compulsory. People will readily come forward to register their own tenures and tenures held under them. Registration offers manifest advantages to both landlord and tenant, which will be quickly perceived and eagerly availed of.

Tenures may be registered on the application of either landlord or tenure-holder. The only condition insisted upon, and insisted upon for an obvious reason, is that the parent estate or tenure should be previously registered.

Section 24.—Every application for the registration of a tenure shall be presented in the Court of the Subordinate Judge, duly verified and accompanied by leases or counterpart leases relating to the tenure, if any. It shall contain the following particulars :—

(1) (*c*) to (*l*) of section 20 ;
(2) name and description of the immediately superior estate or tenure, and reference to its registration under the Land Registration Act, 1876, or this Act ;
(3) date and description of leases and counterpart leases filed with the application, if any.

Section 25.—The Court, on receiving an application framed as above, shall register the same and issue a summons to the opposite party, whether landlord or tenure-holder, to file in his Court a return duly verified, accompanied by leases or counter-leases relating to the tenure, if any, and containing the particulars specified in section 24.

If the opposite party do not file his return within the time appointed in the summons, the Court may proceed against him as against a recusant witness under the rules contained in that behalf in the Code of Civil Procedure.

Section 26.—The Court, on receiving a return under the last preceding section, shall appoint a day for hearing in the presence of the agents or vakíls of both parties.

Upon the day appointed for hearing, if the Court shall find, after reading the petition and return, and examining, if necessary, the agents or vakíls of the parties, that there is no difference between them on any of the following points :—

(*a*) admissibility of the tenure to registration,
(*b*) amount of annual rent payable therefor,
(*c*) instalments in which the rent is payable,

the Court shall record a proceeding and pass order for registering the tenure and any lease or counterpart lease filed by the parties which are admissible for registration under section 22 of this chapter. The Court may also note in the proceeding, and direct to be noted in the general register, any difference existing between the parties in other particulars. The tenure and the admitted lease or counterpart lease shall thereupon be registered, and a memorandum of such registration shall be endorsed upon such lease or counterpart lease under the seal and signature of the Court.

Section 27.—If after reading the petition and return and examining the agents or vakíls of the parties, the Court shall find that there is a difference between them on any of the points specified in the last preceding section, the Court shall record the points of difference, appoint a day for hearing and upon the appointed day try and determine the issues between the parties as in a declaratory suit.

Registration shall thereupon take place in such manner as the judgment shall direct.

Section 28.—An appeal shall lie from the judgment of the Court as an appeal in a declaratory suit.

NOTE.—Any dispute between the parties will thus be at once and finally decided. This is one great advantage of having the registration made by the Civil Court.

Section 29.—Any changes in the names of the landlord and tenure-holder, changes in the amount of annual rent, whether by contract or decree of Court, and changes in other particulars may be registered in the Court of the Subordinate Judge in a similar manner under a procedure following as nearly as possible the lines of sections 25 to 28.

NOTE.—It will be seen that the registration of tenures in the Civil Court under the above procedure will present no difficulty of any kind. In the large majority of cases there will be no difference between the landlord and tenant, and registration will be a mere formal matter. In some few cases differences will arise, and then they will be determined at once and finally between the parties. Registration being left optional, it is not likely that the parties will bring before the Court contentious cases in large numbers. People usually bide their time and do dot rush into Court with doubtful or disputed claims, unless compelled to do so by any rule of limitation.

The writer humbly suggests that provision should be made for the repeal of Regulation VIII of 1819 two years from the date of this Act. Within that period all landlords should be able to register tenures held under them

The writer hopes he has sufficiently shown that the registration of tenures is not such a bugbear after all, and that it does not require a separate Act of the Bengal Council. Everything depends upon the manner of doing

it. It may be easily done under an easy and simple procedure without producing any appreciable friction between landlord and tenant. But it is quite possible to do it in a different manner so as to embroil landlord and tenant and to produce the greatest crop of litigation out of it. If that be the object, pass a long and cumbersome Act, make registration in great detail and of a large number of unnecessary particulars compulsory, and entrust the work to the Collector of the district.

PART II.

Rent-suits and Sales for Arrears under Decree.

In suits for rent, one or more of the three following issues usually arise for trial, namely :—

1. What is the annual rent of the tenure or holding ?

2. In what instalments is it payable ?

3. What payments have been made by the tenant ?

The third issue is comparatively unimportant, and its trial presents little difficulty. Payments are usually evidenced by receipts. Any false case on either side on this point is easily detected, and sometimes leads to criminal prosecutions. This acts as a sufficient deterrent, and very few cases occur in which there is any serious contest between the parties regarding payments ; but the other two issues are points of vital importance. The affirmative lies upon the landlord. He has to prove it in all *ex-parte* suits and in the great majority of defended suits, the line of defence commonly adopted being to join issue on the annual rent claimed by the landlord and to throw upon him the burden of proving it.

The especial procedure set out in Part I of this Review rests upon this principle, that where the Civil Court has, in the course of registration, determined the amount of annual rent and the instalments in which it is payable a formal suit for rent is needless, and the landlord may at once apply for the sale of the tenure as in an execution-proceeding, in which any question of payment raised by the tenure-holder may be as fully tried and finally determined as in a regular suit. The special procedure is, for obvious reasons, inapplicable to raiyats' holdings, and cannot be safely extended to tenures other than permanent tenures. When a raiyat makes default in the payment of rent, and the matter has to be brought into Court, it must, in the first instance, be in the shape of a proceeding in which the Court shall be able to fully try all or any of the three issues stated above which may be raised in the case. Such a proceeding, by whatever name you call it, is no other than a civil suit. The question of court-fee stamp is not of much importance in rent-suits against raiyats. The suits are generally for small amounts, and the stamp-duty that has to be paid forms a very small proportion of the actual costs that have to be incurred in such suits.

But when in a civil suit a decree has been made for the rent of a holding or tenure, and the amount of annual rent and instalments determined, there is no reason why there should be a series of suits for subsequent years against the same tenant. He may be proceeded against by application as in an execution-proceeding for subsequent rents accruing upon the same tenure, and in such proceeding any question of payment or other matter that may be raised by the tenant shall be tried and determined. This will save to the Court the civil suit, to the tenant the legal costs thereof, which ultimately fall upon him, and to the landlord the extra costs and two months' time, which is the usual period of gestation of an ordinary rent-suit. The writer thinks that the addition of a few sections on the following lines to the chapter on Judicial Procedure will eliminate a great deal of unnecessary and costly procedure, and be advantageous to both landlord and tenant :

1. In every suit for rent the Court shall find and specify in its decree the annual rent of the tenure or holding and the instalments in which it is payable.

2. When the annual rent of a tenure or holding, and the instalments in which it is payable have been determined and specified in a decree as aforesaid, the landlord may, on the accrual of subsequent arrears on the same tenure or holding against the same tenant or raiyat, apply by petition in the said Court that the amount of such arrears be recovered under the rules for the execution of a rent-decree.

Proviso (*1*).—No such petition shall claim rent at a higher rate than that specified in the decree, nor include arrears of rent barred under the rules of limitation contained in schedule IV of the Act.

Proviso (*2*).—No such petition shall be presented oftener than twice in the year.

Proviso (*3*).—No such petition shall be entertained after the lapse of ten years from the date of the decree.

Note.—Section 293 of the Code of Civil Procedure and Act VII of 1880 (B. C.) furnish instances of the application of the execution procedure without previous suit. There is nothing anomalous or incongruous in it.

To prevent the tenant being harrassed, and the Court being flooded by such petitions on default being made in every monthly kist, *Proviso No (2)* has been put in as a necessary safeguard.

Some rule of limitation, such as is contained in *Proviso* No (*3*), seems also to be necessary. It is obvious that a decree specifying the annual rent and instalments should be renewed at certain intervale, in order to keep pace with the progress of time and the changes brought on thereby.

3. On the presentation of the petition, the Court shall register it and issue a notice on the opposite party to appear on an appointed day and show cause why the amount claimed in the petition should not be levied from him. The Court may, simultaneously with the issue of notice to the opposite party, issue process for the sale of the tenure if it be saleable, or for the attachment of moveable and immoveable property belonging to him; but no warrant for the arrest of the opposite party shall be issued until after the expiration of the day appointed for his appearance to show cause.

4. If the opposite party do not appear and show cause, the Court shall make the rule absolute. If the opposite party appear and show cause, the Court shall hear the case in the presence of the parties. If the parties are at issue on questions of fact, the Court may adjourn the hearing and fix a day for the production of evidence and final disposal of the case. On the appointed day, the Court shall try and determine the issues between the parties, and record judgment which may be for upholding, reducing, or dismissing the claim of the landlord.

5. The decision of the Court under the last preceding section shall have the force and effect of judgments in rent-suits, and shall be open to appeal and revision under the rules and limitations applicable to decrees in such suits.

It will be seen that the recovery of rents by the execution procedure as sketched above will present no difficulty of any kind. The tenant, if he have any good cause to show against his landlord's claim, will have a full trial of his case. In short, nothing is excluded by this procedure except a needless formal suit.

The writer will now proceed to consider a few sections of chapter XIV of the revised Bill relating to Judicial Procedure, which, in his opinion, are especially open to objection, or on which improvements may be suggested.

CAPHTER XIV OF THE REVISED BILL.

Judicial Procedure.

Section 160. (1) *The cause of action in all suits between landlord and tenant as such shall for the purposes of the Code of Civil Procedure, be deemed to have arisen within the local limits of the jurisdiction of the Civil Court which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant exists between the parties.*

Section 168. An appeal shall not lie from any decree or order passed, whether in the first instance or on appeal, in any suit instituted by a landlord for the recovery of rent, where—

(a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees; or

(b) the decree or order is passed by any other judical officer especially empowered by the Local Government to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed fifty rupees;

unless in either case the decree or order has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto or a question of a right to enhance or vary the rent of a tenant.

Provided that the District Judge may call for the record of any case in which a judicial officer as aforesaid has passed a decree or order to which this section applies, if it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District Judge thinks fit.

Sections 160 and 168 may be considered together. To allow no appeal from a decree or order passed, whether in the first instance or on appeal by a Subordinate Judge in rent-suits under Rs. 100, is a move in the right direction. But the exception to this rule should be extended by adding a clause to the following effect in the fourth paragraph of section 168:—

"or unless the decree or order has decided a question of the amount of annual rent payable by the tenant or of the instalments in which it is payable."

It has been shown at the outset that these are questions of vital importance between landlord and tenant. Any decision on these issues goes a great deal beyond the scope of the suit in which they are raised, and seriously affects the position and rights of the parties in respect of future rents. Such decision should be open to appeal.

The last paragraph of section 168 should be omitted. It will do no good to give this power to the District Judge. The High Court has it under section 622 of the Code of Civil Procedure, and it ought not to be conferred upon an inferior Court. Any exercise of this power by the District Judge is sure to lead to a further application to the High Court, and it will be held as often as not that the Judge in setting the first Court right has himself, "exercised a jurisdiction not vested in him by law."

The writer has noticed section 168 first, because the provisions of that section would lend strong support to the following important suggestion which he would submit for the consideration of the legislature and the public, namely, to make all rent-suits and applications under the Rent Act cognizable by the Court of the Subordinate Judge. There is little advantage in having the small suits of this class tried in the first instance by a less experienced officer and then re-tried by the Subordinate Judge in appeal. The appeal may very well be saved by making

them triable in the first instance by the more experienced officer. Especial Judges and especial Courts mentioned in clause (*b*) of section 168 are not likely to prove successful. It will be far more simple and far less costly to entrust the jurisdiction to Subordinate Judges—a class of judicial officers who possess general confidence and stand well in public estimation. The Local Government should bear in mind that the appointment of Subordinate Judges is in its hands, and that it is more simple to appoint efficient men to preside over these established tribunals than to create especial Courts. It is also a point of great importance that there should be no doubt as to the jurisdiction of the Court. Section 160 as framed will render a much larger proportion of rent-suits cognizable by the Subordinate Judge than under the present law. This is good so far; but the jurisdiction will depend upon the value of "the land in respect of which the relation of landlord and tenant exists between the parties." The Subordinate Judge or the Munsif will have jurisdiction accordingly as the value of the land does or does not exceed Rs. 1,000. This is a question of fact which will be frequently raised, and will have to be determined on evidence. All this u necessary litigation may be avoided by giving exclusive jurisdiction to the Court of the Subordinate Judge.

Section 163, sub-section (b). The plaint shall contain, in addition to the particulars specified in section 50 of the Code of Civil Procedure, a statement of the situation, designation, extent and boundaries of the land held by the tenant, or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof a description sufficient for identification.

Sub-section (e). A written statement shall not be filed without the leave of the Court.

Sub-section (*e*) should be struck out. There is no reason why the tenant should be placed under any disadvantage in respect of making his defence. It is not at all likely that leave to file written statement will be refused in any case. This little clause will not do any good to any body, but simply put the tenant to the cost of making an application for leave, and put the Court to the trouble of hearing it.

Sub-section (*b*) is equally objectionable on the side of the landlord. In the large majority of estates it will be impossible for the landlord to meet its requirements. The matter was fully considered in the Rent Commission, and the old law was left untouched—see Mr. Field's Digest, paragraphs 149 and 185, and Bill prepared by the Rent Commission, section 167. If you make it compulsory on the landlord to state boundaries in the plaint, you will enable the tenant to raise a foreign issue in the case by alleging that there has been misdescription. It is not desirable that the trial of a rent-suit should be encumbered with an issue, to determine which a protracted enquiry would often be necessary, but which, when determined, would be wholly unnecessary for the decision of the suit. The annual rent of the tenure or holding, and the instalments in which it is payable, are necessary particulars in a rent-suit, and should be substituted for the boundaries.

Section 166. When a defendant is liable to pay money into Court under either of the last foregoing sections, if the Court thinks that there are sufficient reasons for ordering that the money be paid by instalments, it may take cognizance of the defendant's plea on his paying into Court such instalment as the Court directs.

The principle of payment by instalments is wholly inapplicable to rent-decrees. There is only accumulation of interest on other decrees for the payment of money, but in case of rent-decrees the debt accumulates with interest and subsequent instalments of rent.

Section 174. (1) The Court having jurisdiction to determine a suit for the recovery of land held by a tenant, may, on the application of either the landlord or the tenant, determine all or any of the following matters, namely:—

(a) the situation, quantity and boundaries of the land held by the tenant;

(b) the class to which he belongs,—that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and if he is a tenure-holder, whether his rent is liable to enhancement; and

(c) the rent payable by him at the time of the application.

(2) If in the opinion of the Court any of these matters cannot be satisfactorily determined without a local enquiry, the Court may direct that a local enquiry be held, under Chapter XXV of the Code of Civil Procedure, by such Revenue-officer as the Local Government, by rule, directs.

(3) The order on any application under this section shall have the effect of, and be subject to, the like appeal as a decree.

The writer does not see that any useful object will be attained by directing that the local enquiry should be made by a Revenue-officer. An experienced officer in the higher grades of the Revenue Department will not conduct this enquiry himself. He will depute an Amín or Sub-Deputy to make the local enquiry, which may be done with equal result by a Civil Court Amín. The passage of a case from a Civil Court to a Revenue-officer will be productive of very great harassment to the parties. It would be far more simple to improve the position and efficiency of the class of officers attached to the Civil Courts and known as Civil Court Amíns. This class of officers is practically self-supporting, and cost the Government nothing. The fees paid by suitors for the employment of such officers in local enquiries cover their pay.

Section 170, relating to forfeiture, and sections 171 and 172, relating to ejectment, do not properly come within the scope of this Review. They are the outcome of changes proposed to be made in substantive law, and not mere matters of procedure.

CHAPTER XV OF THE REVISED BILL.

SALE FOR ARREARS UNDER DECREE.

The procedure contained in this chapter is somewhat cumbrous, and not likely to work well in practice. When a decree has been obtained for an arrear of rent due on a saleable tenure, it may very well be brought to sale under the especial procedure dealt with in Part I, which, with a few slight alterations, may be easily adapted to sales in execution of decress for arrears. A procedure for sale and, in fact, procedure for every matter arising between landlord and tenant, should be as simple as possible, and should contain nothing that is not absolutely necessary. To the landlord the application of the especial procedure will make this difference, that there will be a sale-day in each quarter instead of a sale-day in each month; but against it we may set off the manifold advantages of having sales on fixed days in each quarter. There will necessarily be a great concourse of people interested in land on such quarterly sale-days, and larger competition and greater publicity than on sale days spread over twelve months in the year. Publicity is a point of great importance in auction-sales, and is a more effectual safeguard against fraud than the terrors of a future civil suit. The writer would, therefore, humbly suggest that Chapter XV should be re-cast by making the especial procedure applicable to sales in execution of rent-decrees and incorporating therein the following sections of the revised Bill:—

Section 175. Where a transferable holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this chapter as "protected interests," but with power to annul the interests defined in this chapter as "incumbrances".

Section 176. The following shall be deemed to be protected interests within the meaning of this chapter:—

(a) any under-tenure existing from the time of the Permanent Settlement;

(b) any under-tenure recognized by the settlement-proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;

(c) any lease of land whereon dwelling-houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship, or burning or burying grounds have been made;

(d) any right of occupancy;

(e) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and

(f) any right or interest which the landlord at whose instance the holding is sold, or his predecessor in title, has expressly, and in writing, given the tenant for the time being permission to create.

Section 177. For the purposes of this chapter (a) the term "incumbrance", used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his holding or in limitation of his own interest therein, and not being a protected interest as defined in the last foregoing section.

Section 186. (1) In disposing of the proceeds of a sale under this chapter, the following rules, instead of those prescribed by section 295 of the Code of Civil Procedure, shall be observed, that is to say:—

(a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding to sale.

(b) There shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made.

(c) If there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the sale, but not more than six months after the date of the final decree.

(d) The balance (if any) remaining after the payment of the rent mentioned in clause (c) shall upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application.

(2) If the judgment-debtor disputes the decree-holders' right to receive any sum on account of rent under clause (c), the Court shall determine the dispute, and the determination shall have the force of a decree.

Section 188. (1) When any person having, in a holding advertised for sale under this chapter, an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale,—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve per cent. per annum, and secured by a mortgage of the holding to him;

(b) his mortgage shall take priority of every other charge on the holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the holding as mortgagee, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) *Nothing in this section shall affect any other remedy to which any such person would be entitled.*

Section 189. When a holding is advertised for sale under this chapter, in execution of a decree against a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in order to prevent the sale, he may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Section 190. (1) Notwithstanding anything contained in section 294 of the Code of Civil Procedure, the holder of a decree in execution of which a holding is sold under this chapter may, without the permission of the Court, bid for or purchase the holding.

(2) *The judgment-debtor shall not bid for or purchase a holding so sold.*

The next matter for consideration is the scheme for protecting what are termed in this chapter "registered and notified incumbrances." It has greatly encumbered the procedure relating to execution-sales for arrears; but that alone is not a fatal objection. The idea of the scheme seems to have been borrowed from the law relating to revenue-sales (Act XI of 1859). It will appear, however, on close examination, that the conditions of the two sales are materially different, and there is no real analogy between them in respect of the point under consideration. The revenue-sale law allows no compensation for the avoidance of tenures and incumbrances; whereas the rent-sale law contains provisions for the payment of such compensation out of the surplus sale-proceeds. A tenure-holder's right to receive compensation is subject to a very reasonable condition. It is set out in the proviso to section 206 of the revised Bill, and is as follows:—

Provided that no such suit (for compensation) shall be maintainable by any tenant inferior to the defaulter, if at the time of the sale any arrear of rent was due from him.

If the especial procedure be extended to execution-sales for arrears, the holder of a voidable tenure or incumbrance will have the following remedies:—

(1) he may prevent the sale by paying into Court the amount of the arrears, and recover the same as a charge upon the salved tenure (sections 10 and 16 of the Draft Especial Procedure, in Part I);

(2) he may, after the sale, get it cancelled by paying into Court the amount of the arrears and five per cent. compensation to the purchaser, and recover the same as a charge upon the salved tenure (sections 13 and 16 of the Draft Especial Procedure);

(3) he may, at the worst, obtain a money equivalent for the loss of his tenure, provided he himself be not in arrear (section 18 of the Draft Especial Procedure).

The holder of a voidable tenure or incumbrance cannot, in reason and justice, ask for more. He knew very well when the tenure or incumbrance was created that it was liable to be cancelled upon a sale of the parent tenure for arrears, and presumably paid value accordingly. Upon principle also his claim for further protection seems to be wholly untenable. "The rent of every transferable holding shall be a first charge upon the holding" (section 77 of the revised Bill). To sell a holding for the discharge of the first incumbrance, and to allow subsequent incumbrances to remain upon the property seems to be a clear anomaly.

Numerous complications and disadvantages are sure to result from encumbering the procedure relating to rent-sales with rules for the protection of incumbrances. Sales of tenures for arrears will gradually become like sales of rights and interests in execution of money-decrees, which have acquired such fame for producing splendid crops of litigation. Fraudulent tenureholders will be enabled to register *bénámi* leases absorbing the profits of the tenure, and entrap purchasers. In short, the scheme is not at all likely to work well. It will add to the troubles of everybody, and produce a feeling of insecurity very undesirable in rent-sales.

If this scheme be abandoned, it will eliminate the following sections of Chapter XV:—

Provisos (*a*) and (*b*) in section 175.	Section 181.
Sub-section (*b*) of section 177.	Section 182.
Sub-section (*a*) of section 179.	Section 192.
Section 180.	Section 193.

PART III.

Procedure in Sundry other Matters between Landlord and Tenant.

(*To follow.*)

Dated 13th December, 1884.

From—Secretary, Behar Landholders Association, Gya Branch,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to request the favour of your laying before His Excellency the Viceroy and Governor-General in Council the accompanying memorial, with the report annexed there

with, from the landholders of the District of Gya on the Bengal Tenancy Bill. I further beg to despatch by book-post five copies of the memorial and the report therein alluded to.

To the Viceroy and Governor-General of India.

The humble memorial of the landholders of the District of Gya,

MOST RESPECTFULLY SHEWETH,—That your memorialists have been greatly alarmed and distressed by the provisions of the Bengal Tenancy Bill, and your memorialists respectfully submit that in spite of the changes made therein by the Select Committee, the Bill, far from improving or ameliorating the condition either of the landlords or their tenants, will powerfully tend to upset their present relations, and disturb the harmony which has hitherto generally existed between them.

2. That your memorialists beg respectfully to invite your Excellency's attention to the strange situation of the so-called landlords in this province under the laws at present in force. Their lands are subject to a summary sale law for arrears due to Government, and even their persons to arrest and imprisonment, under a summary certificate procedure law, and this for public demands upon their lands, not due by them but by their tenants, while for the realization of their rents they are obliged to have recourse to the cumbrous, dilatory, and costly procedure of regular suits in the civil courts. The injustice of this state of things has long been recognized, and so far back as the year 1876 a revision of the Rent Law, with a view to afford to the zemindar greater facility for the realization of his rents, was thought a pressing necessity. Your memorialists respectfully submit that the present Bill not only fails to provide any facility for the realization of rents, but by taking away from them the imperfect power of distraint which Act X of 1859 gave to them, will leave them in a more miserable position than before.

3. That your memorialists respectfully submit that the nature of ryotty tenures in this district, owing to the natural features of its land, differs radically from that of other districts in Bengal, and that the provisions of the Bill regarding settled ryots, right of occupancy, enhancements of rents, transferability and subletting of the right of occupancy, improvements and management, are quite unsuited to it, and will prove subversive of long established and customary rights of both parties, and most harmful both to the landlords and ryots of the district.

4. That no cultivation is possible in the district without the combined efforts and capital of both the landlord and ryot, and it is the bhowli tenure alone, under which both share proportionately the profit and loss under the effects of good and bad seasons that has encouraged them to join their labour and capital in the work of agriculture. The tenure benefits the landlord because, without the trouble and expense of enhancement, it enables him to get a just return for any labour employed or capital spent by him upon the improvement of the soil, and secures to him the prompt and punctual realization of his rents, while it benefits the ryot, since he has no rent whatever to pay on failure of the crops, which is an ever-recurring evil in the district. Your memorialists and their tenants naturally hoped that a tenure such as this, beneficial to them both, would receive all possible encouragement and support which the Government could give it by legislation; and it is disheartening to find that the present Bill aims at destroying it altogether. Your memorialists beg earnestly to submit that both they and their tenants look upon the provisions of sections 53, 81, 82, 83, and 220C of the Bill which they apprehend would have the effect of annihilating this tenure as the greatest misfortune and calamity that could befal the district. Such legislation was never desired either by landlords or ryots, and your memorialists respectfully solicit Your Excellency's pardon for saying that no justification for these provisions is to be found in the remote and delusive hope that the commutation of the rent now paid in kind into money may possibly increase the produce, and consequently the wealth of the country. The fear of your humble memorialists and that of the local authorities, based upon exact knowledge of the conditions under which cultivation is carried on, is that the result of such communication would be purely calamitous to the district and to the country.

5. That with the kind permission of the Collector of Gya, your memorialists beg to annex with this memorial copy of an official report on the Bengal Tenancy Bill, submitted to him by Babu Bhoop Sen Sing, Senior Government Pleader of Gya, and to solicit Your Excellency's kind attention to the several points therein discussed, as showing how injuriously the provisions of the Bill would affect this district.

6. That in conclusion your memorialists beg most respectfully to submit that, so far as they have been able to understand the provisions of the Bill, they believe that the passing of the measure into law would practically confiscate the rights which were guaranteed to them by the solemn promise of Government in the proclamation which imposed the permanent settlement upon them, and disturb the peaceful relations which have hitherto existed between the landlords and their tenants. A general confiscation of rights, so long recognized by such revolutionary means as the Bill contemplates, will not, your humble memo-

rialists fervently hope, commend itself to Your Excellency's just and benevolent Government; they respectfully pray that Your Excellency will be graciously pleased not to allow the Bill to be pased into law.

And your humble memorialists, as in duty bound, shall ever pray.

No. 42, dated Gya, the 13th July, 1884.

From—Babu Bhoop Sen Sing, B.A. & B.L., Government, Pleader, Gya,

To—The Collector of Gya.

I have the honour, as directed by you, to submit my report on the Bengal Tenancy Bill, as revised by the Select Committee, with reference to the remarks contained in Government of India's letter No. 784, dated 5th May, and Bengal Government's letter No. 3T.—R., dated 24th May 1884. I regret that various other engagements, the voluminous papers connected with the subject which I had to go through, and ill-health prevented my submitting the report as early as I had intended to do.

2. The subject of the Bill is one of extreme difficulty and of the highest importance; and although my opinion thereon may, I am afraid, be not worth the paper it is written upon, yet in obedience to your order, I venture to put before you the conclusions which I have arrived at in consultation with those who take any interest in the matter, and after a careful consideration and discussion of the different questions raised in the Bill and the Report of the Select Committee.

3. Complaints from the actual cultivators of the soil that though the law had secured to them valuable rights in the land and given them protection from duress, illegal distraint, exaction, withholding of receipts, and arbitrary ejectment and enhancement, the patwari's *basta* changing and changeable at the will and pleasure of an unscrupulous landlord, and the costly and cumbrous procedure of the civil court which would keep them hanging about it oftener at times when they could more advantageously be employed in their fields, prevented them from asserting their rights, and compelled them to remain quiet at the mercy of the landlord; and on the other hand, equally just appeals from the landlords for protection from frequent agrarian disturbances and combination of tenants to withhold and resist the payment of rents; their repeated complaints that the law was weak and feeble to assist them in the exercise of their right of enhancement, and above all their loud cries for justice and fair play that, while their estates were liable to summary sale under the sunset law, and the summary certificate procedure for Government revenue, and other public demands upon lands, not only payable by them but by their tenants as well, for their own just dues, they were to maintain the highly expensive and dilatory procedure of regular suits in the civil courts, pending the decision of which their estates would either be sold or pledged at exorbitant rates of interest, pressed seriously upon the attention of Government, the necessity and justice of revising and re-casting the existing law. Both the parties expected the revised law to give to each the relief and protection he wanted against the other. The zemindars expected a summary and simple procedure for the realisation of their rents, facility for, and enlargement of the grounds of enhancement, and safe and secure enjoyment of all the emoluments, present and future, to which they were entitled by law without any curtailment. The actual cultivators of the soil in their turn expected an easy, speedy, and less costly procedure which would enable them to hold their own, and protect themselves from improper encroachment upon their rights and emoluments by a ruthless and unscrupulous landlord. An impartial lover of justice and fair play, acquainted with the wish and advice of the legislature, repeatedly expressed and made known from the time of the permanent settlement, that neither of the parties should look upon the other as hostile in interest, and that both should live in peace and harmony, working for their common weal and benefit, and for the improvement of agriculture upon which depended and depend the wealth and prosperity of the country, would naturally expect the revised law to take away nothing from, and add nothing to, the vested rights of both parties. Every one expected that the revision of the law, so earnestly desired by both landlords and tenants, would bring on peace and harmony between them, and inculcate upon each to love and regard the rights of the other as his own. But the present Bill, in its present form, forgetting the original complaints of both the parties, ignoring the reliefs they respectively prayed for, and declaring and creating new rights to the great detriment of the old and vested ones, would throw both the parties into a turbulent and boisterous sea of litigation, there to be wrecked on the rock of ruin and starvation.

4. The above is the impression which a close and careful perusal of the Bill, chapter by chapter and section by section, has left upon my mind, as well as upon the minds of those in this district, who have read it with some interest. So far as our district is concerned, the Bill is quite inapplicable and unsuited to its peculiar circumstances and its time-honored tenures, which do not seem to have been properly represented to the Members of the Council, or which appear to have escaped that amount of careful consideration which the importance and peculiar nature of such tenures absolutely demand.

5. Hilly tracts, sandy lands, and absence of navigable rivers make the relation of landlords and tenants, and the tenures themselves in Gya, very different from what they are

elsewhere, and legislation congenial to any other part of the country is and must necessarily be quite unsuited to this part of Behar. The nature of the soil and the physical features of the district make any improvement in agriculture, nay cultivation itself, without the cordial and combined efforts of both the landlords and the tenants, a matter of exceptional difficulty, if not of utter impossibility. In this district the capital of the landlords and the labour of his servants and those of the ryots have kept agriculture and cultivation a-going. The rivers and streams in the district, being dry all throughout the year, except during the best rainy season, every village has to maintain a large and extensive system of irrigation, in the shape of ahars (reservoirs) and pynes (artificial watercourses), at very heavy costs which are all borne by the landlords alone. The number of cases, both civil and criminal, in connection with water disputes, which crop up every year in this part of the country, and in which the landlord alone figures and bears the whole expenses of litigation, with all its concomitant evils and troubles, will satisfy the legislature that the Gaya zemindar, even where he is rack-renting and tyrannical, considers his interests as identical with those of his ryots, and is always ready to help them with men and money for their own welfare as well as for the improvement of agriculture. Any one unacquainted with the state of affairs in this district, and visiting any of its agricultural villages at any time during the months from July to September, will be struck with surprise at the strange sight of the zemindar, the rich by his servants, the poor himself, regardless of sun and rain, not unfrequently without an umbrella over his head, supervising the putting up, with his own money, of dams in rivers, cleaning the beds of pynes, conducting waters from place to place, filling up reservoirs with them, running from field to field, to see the proper distribution and economical use of the waters, so brought to the village, with hard labour and at heavy costs.

6. It is not unfrequently that the land lord, in hard years, supplies his ryots with seeds (*bihun*) and food (*khaihun*), to be returned to him within the agricultural year, with interest, at 2 annas per rupee a year, which is equivalent to 12½ per cent. per annum. But cannot the ryot do all these himself without the aid of the zemindar? My answer to this question would be an emphatic *No*. It is impossible for him to maintain the village reservoirs and the intricate water-courses, which are so many arteries and veins of vital fluid, supplying the life-blood to its whole agricultural community. But why? Because, in the first place, his holding being scattered in small plots and patches all over the village area, many at considerable distances from the ahars and pynes, he will not think it worth his while to spend any money upon the construction and repairs of the common reservoirs and water-courses; secondly because he has not the means, nor has he any credit with money-lenders, to raise the required sum by loan. Thirdly, because, in the present state of the country, the habits of the people, their ancient and inherited mode of thinking and their want of confidence in each other, so natural in monetary transactions among the ignorant and illiterate mass to which the majority of the cultivators belong, would make combination and raising up of subscriptions among themselves, creation of a joint common fund and the appointment of trustees for the proper management of such a fund, any thing but practicable within the bounds of possibility. Fourthly, because assuming even for the sake of argument the possibility of the creation of such a fund and the appointment of such trustees as aforesaid, the mob would be without a lead, and each ryot having paid for the common reservoirs and water channels, would claim the priority of irrigating his fields, and try to assert his rights or supposed rights, by means fair or foul, which would often lead to serious affrays resulting in the breaking of bones and shedding of blood, and sometimes terminating in murders and manslaughters. If not this, there would certainly be surreptitious cutting of reservoirs and diverting of channel-waters, by a ryot whose single field of a few kuttahs in some remote corner of the village land is drying up at a time when the whole village requires to keep them closed or in their proper course as the case may be, and thus all the water might be wasted to the immense loss and injury of the rest of the ryots. I might add here, as the result of many years' experience, that in joint estates, owned by several proprietors, irrigation works suffer a great deal for want of co-operation and union among themselves, in carrying out such works for the benefit of such joint estates. But the proprietors who were indifferent and careless when the estates were joint, would no longer appear to be so when the estates are partitioned. After partition has been effected and the lands marked out, the first thing that the proprietor of each plot takes up is the irrigation-work of his plot for which he spares neither pains nor money. In this district there are numerous pynes known under the name of *Dasiain*, running over several miles with numerous branches held in common by several villages. One of these from the Jumna river runs over more than 12 miles and irrigates about 60 villages, containing in all upwards of 17,000 cultivators; and if pynes like these were left in charge of the ryots, the result would be what can be better conceived than described, proving itself extremely disastrous to the ryots themselves and ruinous, to the cause of cultivation. The last, but not the least, reason is that the reservoirs and water-courses are subject to constant litigation between neighbouring villages, and have always been a fruitful source of serious riots and affrays. The cases, whether civil and criminal, thus cropping up require to be carefully conducted and properly managed, as upon their results depend the prospects of both the landlord and the tenants. It is highly desirable that the management and the looking-after of such cases should be entirely in the hands of that party which possesses better intelligence and superior understanding. There can be no doubt that the landlord is better than his ryots in point of intelligence and understanding. In the present state of affairs, the reservoirs and the water-courses are maintained at the exclusive costs of the landlords, who keep a vigilant watch

over them and exclusively control their opening and closing up. No ryot ever ventures to open them without his landlord's permission, which is never withheld unless when it would be injurious to the interests of the majority of the cultivators.

7. Having shewn the physical impossibility of making any improvement in agriculture, nay of keeping up cultivation in this district, without maintaining costly reservoirs and water-courses, and having also shewn that these cannot be well kept up and maintained by the ryots, individually or collectively, and that they have, from time beyond all legal memory, been kept up exclusively by the landlords at their own expenses, I next proceed to shew why the landlords have undergone, and are undergoing, so much troubles and expenses for their ryots. The preamble to Reg. II of 1793 desired both land lords and tenants to keep them on. Enhancement suits in Gaya have not been heard of. In fact, during my comparatively extensive practice at the Gaya Bar for the last 14 years, I never had a single enhancement suit to conduct or defend. Is it that the landlords have been making enhancement by underhand means and illegally out of Court? Doubtless, the Reyan class (the cultivators of inferior orders) who plough with their own hands and never engage hired labour, look upon their zemindar, not only as the lord of the land they till and cultivate, but as a divine being; and with them the landlord may do whatever he likes. Wallowing in the mire of ignorance, living from hand to mouth, and spending all their savings in the grog-shop, the cultivators of this order confound their *Gowan* (landlord) with their *Bhagowan* (God), against whom they will not and cannot go to Court. But the landlord's task is not so easy, nor his position so sacred and awe-inspiring with the superior class of cultivators, the Brahmans, the Babhans, the warrior and other classes who cultivate their lands through their servants or hired men and who form the bulk of the cultivators of this district. Many of these are the descendants of the proprietors of byegone times, and consider themselves by birth and in position, equal, if not superior, to their landlord. They are quarrelsome and litigious, and without fight, they would not yield an inch to him. They are a terror to him instead of he being a terror to them. He has met with difficulties and obstacles in realising his just dues from them, and it cannot possibly be maintained that he could enhance their rents so easily and quietly, without the aid of Court. The records of the Civil and Criminal Courts here will shew the number of cases and complaints that were and are brought by the cultivators of this class against their landlords, as evidence of the fact that they would resist with all their might any, the least, attempt at an arbitrary or illegal enhancement. If the landlord has not been able to make enhancements in or out of Court, why, it may be asked, has he been spending so much money and undergoing so much trouble for his ryots and for the improvement of agriculture? My answer to this is that the nature of the ryoti tenures in Gya is such as would enable him to get a return and reward for his money and labour, without the necessity of enhancements, legal or illegal, and that his neglect to keep on these works of irrigation would cause loss not only to his ryots but to himself as well.

8. This brings me to the consideration of the tenures of various descriptions that prevail in this district. The first and the foremost among them is the Bhowli tenure, under which the greater part (more than four fifths) of the cultivated lands here are held. Its distinguishing feature is the payment of rents in kind, not in any fixed quantity but in a fixed proportion on the actual outturn of the crops grown. The rent paid or payable accordingly varies from year to year. The land is tilled and the seed sown is supplied by the ryot or at his cost—the costs of hoeing and transplanting, of weeding and clearing being also borne by him. But the water is supplied by the landlord at his own cost. The costs of gilandazi, throwing up of earth, division of lands into plots, by *ais* and *ails* (ridge-walls) according to their levels, for the storage of the necessary quantity of water, and of erecting embankments on the banks of rivers for the protection of the villages from being over-flooded, are exclusively paid by him. In dry years when water cannot be supplied from rivers and village reservoirs and artificial water-courses, he pays the ryots the costs of sinking wells. It is not only that the landlord supplies water for irrigation, but as the rise or fall in his income depends upon the increase or decrease in the produce of the lands, he naturally shews as much anxiety and takes as much care in the proper and timely ploughing thereof, as he would have done had he been a cultivator himself, and his servants are always found to be busy in superintending the tilling of the soil, the sowing of the seeds, the transplanting of the crops, and so forth according as the case may be. If the ryot's bullock happens to die in the ploughing season and the ryot is unable to procure one in its stead, the zemindar would come forward and help him with one, even at the risk of running into debt, if he is poor. Seeds are also supplied by him in the same way. For similar reasons, the landlord is interested in seeing that the best crops are grown upon the land it is capable of producing. No ryot has the right to sow any crop inferior to what the land is capable of producing, nor can he be allowed, without the express consent of his landlord, to grow crops which, by the custom of the country, Nekdi rent is paid for, or which is incapable of being appraised or stored in the *Khalihan* for division. From the time the crops are sown to the time they are appraised and stored, the landlord watches the crops with keen interest and protects them from being wasted or otherwise injured by men or cattle. For this purpose he has to maintain an establishment of Barahils and Goraits, the former of whom receive their salary from the zemindar and a share in one of the *abwabs* called *mangan*, while the latter are remunerated by the zeminder with *Jaggir* and *Pawbhi*, as well as with a share in the *notcha*, an abwab which will be described

hereafter. This kind of tenure, it may be remarked *en passant*, is a peculiar one and has not its like any where else either in Asia or Europe; and it would be a mistake to compare it with the European metayer system and to condemn it as having all the evils of that system without any of its advantages.

9. It would thus appear that in the rearing up of the crops, the capital and labour of both the landlord and the ryots are employed. The crops in the fields remain in charge of both. Both have vested rights in the land, and I fail to see why the crops should be considered in the possession of the ryot any more than in that of the landlord. Under the circumstances, both law and equity would consider not only the land, but the crops as well, as the joint property in joint possession of both. Such has always been our legal conception of the rights of the parties with regard to the possession of the crops. Both the ryots and the landlord have, from time immemorial, dealt with the crops of Bhowli lands as their joint property Neither party ever believed, nor does it even now believe, that the one can touch or remove the crops of Bhowli lands without the consent or permission of the other.

10. Having thus pointed out that the Bhowli crops are, by custom and the circumstances under which they are grown, regarded by the parties concerned as their joint property, we proceed next to ascertain what, under law and the said custom, have been the respective shares of the parties and how each has been taking and enjoying its share. The whole of the straw and the chaff, which are not without value, goes to the ryots. It is only out of the grain-produce, that the zemindar gets a share which, though everywhere more than half, is different in different pergunnahs, and almost in different villages, and which again varies with the different classes of ryots, whether *Reyan* or Surfa, the former delivering a higher and the latter a lower share; and we shall be very near the true figure, when we state that the zemindar's share, with the customary abwabs, is $\frac{9}{16}$ of the grain-produce. But if the value of the straw and the chaff which are in these days, as much valuable commodities as grains, be taken into consideration, the highest share which the zemidar gets in lieu of rent, would be much less than even half of the total gross produce. The value of the straw and chaff may fairly be assumed to be one-third of the grain-produce. It has been stated to me by cultivators that ordinarily 100 small bundles or 4 men's load of paddy would yield one maund of rice; and if the rice be sold for one rupee this straw might be sold for 4 annas to 6 annas. Thus out of the total gross produce of Rs. 21, while the zemindar would get Rs. 9, the ryot gets 12. I cannot vouch for the exactness of the figures given above, but I am assured by both zemindars and ryots that they can be taken as the basis of a fair comparison of the values of their respective shares in the bhowli crop. Paddy being the principle produce of bhowli lands, it would not be out of place to allude here to the proverb which is so common both among zemindars and ryots of Behar, *viz.*, "*sab dhan sarhe basis pasari*" all paddy twenty-two and half pasaris (one-eighth of a maund)." Twenty-two and half *pasaris* out of forty *pasaris* would correspond exactly with $\frac{9}{16}$ share of the landlord in the grain-produce of the bhowli land.

11. The mode in which the two parties take their respective shares of the crops is either by *Dana bandi* (appraisement) or *Agorbatai* (apportionment). I have already said that in the fields the crops are watched and protected by both the parties, neither of whom can touch them without the permission of the other. As soon as the crops are ripe for harvesting, the zemindar deputes an *Amin* (assessor) and a *salis* (arbitrator) to make an estimate of the grain-produce. In the presence of these officers, the ryots, the village *gomasta*, the patwari, and the *jeth* or the principal ryot, who generally knows to read and write, representing and watching the interest of the ryots; the village chainman called *Katha dhar* (holder of wood or bamboo) measures the field with the village bamboo which in this district is nowhere less than 8 feet, 3 inches, or more that 9 feet in length. The *salis* then goes round the field, and from his experience guesses out of the probable quantity of the grain in the fields, holds a consultation with the amin and the village amlas, and when the quantity is unanimously agreed upon, it is made known to the ryot. If he accepts the estimate so arrived at, the quantity is entered by the patwari in the *khasra* or field-book. If he objects, other ryots are called in to act as mediators, and if they fail to convince either party, a *partar* or test takes place. On behalf of the landlord, a portion of the best part of the crops is reaped, and an equal portion of the worst part is reaped on behalf of the ryot. The two portions so reaped are threshed and the grain weighed. On the quantity thus ascertained, the whole produce of the field is calculated and entered in the *khasra*. From the time the estimate is made, the zemindar withdraws his connection from the crops which are then left in the exclusive charge and possession of the ryots but their (the ryots') interest therein until reaped is still carefully watched by the budhwara or the watchman and the other village establishment. After the appraisement of the field, the ryot is allowed the full liberty of reaping the crops and taking them home at any time that may suit his convenience. Out of the estimated quantity, a deduction at the rate of two *seers* per *maund* is allowed to the ryot, which is called *chhut-ti* (let off.) I have not been able to ascertain the exact reason for which this allowance is made to the ryot from the joint quantity of grain. There has been a diversity of opinion on this point. But as in the *Agorbatai*, the reapers who also thresh out the grains are paid from the joint crop, I presume this is allowed to the ryot to meet the cost of reaping, gathering, and threshing. The landlord's share is then calculated on the quantity left after the *chhut-ti* has been deducted. The total quantity thus left is then equally divided, to the one-half is added what under the name of *daheak*, *neg*, or *habub*, is called the bhowli pattah which, as already stated is different in different places and

with different classes of ryots. But so far as I have been able to ascertain from records of rent suits and from my own personal knowledge of my own estates, as well as from other zemindars and the ryots, this *daheak* is in no case less than 1¼ seers or more than 4 seers per maund calculated on the other half. To this being added the *pansera*, the *nocha*, the *badhwara*, the *parial* and *mauserhi* of which I shall speak hereafter under the heads of abwabs, the zemindar's total share would come to, in some cases, a little less, and in others, a little more than $\frac{2}{16}$ which is called the *ain* as distinguished from the nakdi-rent called the *mal*. The word *ain* means "something" and as a matter of fact the landlord gets his share in the same kind of crops that are grown in the field.

12. Under the *dana-bandi*, the ryot is bound to deliver the zemindar's share at the kutchery; and if the grain is spent or otherwise used by the ryot he is charged with money value of the grain so spent or used. If the parties do not agree to *dana-bandi*, the crops are reaped under the supervision of both, and gathered in a common threshing floor, called *khalian* where too they are carefully and strictly watched by both the parties. Threshing does not take place until the whole crops of the village have been thus gathered in the *khalian*. Neither party is allowed the use of the crops which remain in the joint possession of both, till the grains are threshed out, weighed and divided. During the reaping period, the ryot, at the end of each day, gets what is called *lorha* (the ears of corn accidently dropped at the time of reaping) and *denowra* and *chhokowti*, in certain varying proportion in every village and perganah, as daily wages of the reapers. From the joint crops, the village barber, washerman, potter, blacksmith, carpenter and the tanner who have worked all the year round for the ryots and occasionally for the zemindar, receive their fixed *bojhas* (bundles) and *panjas* (half bundles) in lieu of which in *dana-bandi*, it is said, some of them pluck the ears of corn from the fields at the time of appraisement. When the heap of grain is ready for division, the grain which is blown away with the chaff, is all left to the ryot, and is commonly known by the name of *agar*. Then again out of the common heap, certain fixed proportions known by the name of *agaoon* (offering for family God,) *bishun pirit* (offering to priest) and *bhut kuri* (spirit's share,) are set apart in honor of the family and village gods of the ryots, and are given to the ryots for holy purposes. Out of the grain thus left in the heap, the zemindar gets his share and what is left at the bottom of the heap, mixed up with dust and is called *tari*, is all left to the ryot. The *tari* and the *agar* too are allowed in a fixed proportion, so also the *agaoon*, *bishun pirit and bhutkuri*. The fees of the village amlas are also paid from the joint heap. This system is called *agorbatai*. The items mentioned above, are not allowed in the Danabandi system, as the ryot, there takes the chance of the rough estimate, by way of contract, which is less troublesome and may give him more than *agorbatai*.

13. The *agorbatai* has the appearance of more fairness than the *danabandi*, but is disliked by both landlords and tenants. By the landlords, because it entails upon him a great deal of trouble, and by the tenant, because it prevents him from using and enjoying the produce of his fields in proper time and keeps him under the suspicion of the landlord's servants and leads to friction between them. There is also a good deal of wastage in the *batai*, as the parties hurry over the reaping. The crops which under the *danabandi*, would go to the ryots house, in the months of *Poos* and *Magh*, at the latest, cannot, under the *agorbatai*, with all possible haste, be divided and removed from the open *khalian*, till the end of *Fagoon* or the middle of *Chait*, at the earliest.

14. It would thus be very clear that the straw and chaff all going to the ryot, and he taking, at least $\frac{1}{20}$ of the grain produce in the shape of *chhut-ti* in *danabandi* and of the several items, alluded to before, in *batai* from the joint heap of grain, and the zemindar's highest share being $\frac{2}{16}$ of what is left after due deductions, as detailed above, there could be no ground for the remark, once made by the Bengal Rent Commission, that the bhowli tenant who pays as rent so much as half the produce must have the option of cultivating only so much of his holding as he likes, especially when the zemindar pays out of his own share, the costs of the establishment so essential for the interest of both, and has to meet the enormously high expenses of supplying water, erecting embankments, &c., I have tried above to give as full, faithful, correct and accurate an account of the bhowli tenure, with all the main and important incidents of this peculiar tenure, of a peculiar nature; of the rights and liabilities of the parties thereunder and the mode of its working, as, with my limited knowledge and local experience, I could. However, ill-featured and ugly, looking as a relic of primitive ages long gone by, and, however, cumbrous and unmanageable, in practice, it may appear to the civilized people of this enlightened age, to the people of Gaya, at least, it presents a quite different and more agreeable and attractive aspect, as a tenure which is and has always been, the source of the greatest blessings to them. If it were not for this tenure, poor as the people of this district are, they would surely have been far worse off. Having to pay, as rent, only a definite and fixed share in the actual out-turn of his fields, and nothing more than that, if there be a failure of crops, whether total or partial, an event which is of very frequent occurrence in this part of the country, the bhowli tenant has never felt and will never feel the rigour and horror of famine and scarcity so much as his nakdi neighbour who has not only to provide against starvation, but to meet the relentless demand of his unsympathetic landlord for rent which he must pay whether there has been a total or partial failure of crops. I may here state, without fear of contradiction, that no system of tenure could be more advantageous and beneficial to the tenants who are generally so thoughtless and improvident in a country where famine and

scarcity pay periodical visits, than the one, like the bhowli, under which the liability to pay rent varies with the variation in the rainfall and grain-produce of the land. In famine and in years of scarcity a nakdi ryot may be, and as a matter of fact is frequently, compelled to pay rent by selling his holding and sometimes his cattle and homestead too, but not so the bhowli tenant, not even for the road and public works cesses, which having been assessed upon the estate will be paid up for him by his landlord, who will not recover those Cesses from him, as the ryots liability (*vide* Section 41 of IX of 1880) depends upon the rent payable by him, and as failure of crops will relieve him from his liability to pay rent he will be relieved of the cesses also. The tenure is not beneficial to the landlord inasmuch as it enables him to promptly realise his rents without the trouble and barrassment of a suit or without distraint, legal or illegal, and as it enables him to give immediate return of any capital or labour spent or bestowed upon land improvements, without the expenses and embarrassments of enhancement suits. The paucity of rent-suits between landlord and actual cultivators in the districts and the total absence of enhancement and abatement suits, are due entirely to the nature and incidents of this tenure. If it is desirable as the declared policy of every civilized and enlightened Government undoubtedly is and has always been from the time of the Roman Republic, that it is to the interest of the people that litigation should cease, it is nowhere more desirable than among the agricultural classes of Behar in general, and of Gaya in particular, who proverbially poor as they are, would better and more advantageously spend their savings on agricultural improvements than squander them away in litigation which brings them no earthly good in return, but heartburning, distress and destitution. And no tenure is so pre-eminently well constituted and calculated to work as an effective bar to such litigation, as bhowli tenure unquestionably is with all its so-called ugly features and relics of primitive ages. Devoid as the district of Gaya is of all those resources of agriculture which nature has so bountifully bestowed upon the more favoured parts of the province, what tenure can be more suited to the soil and congenial to the people of the district than the one which would encourage the landlord to lay out all his capital and spend his energy and intelligence, to supply, by human skill, art and labour, and would thus give an impetus to the progress of the agriculture which is so devoutly wished for by all. This the bhowli tenure certainly is. The fear of loss, if the landlord neglects or omits to maintain the irrigation works and to attend to the improvement of the land and the hope of gain of which he is sure, if he directs his attention and energy to, and spends his capital upon them, have both combined to operate as a good and stimulns to unite his capital and care with those of his tenants for the benefit of agriculture. It will I trust, be now conceded that this tenure being so beneficial to both landlords and tenants and being so favourable to the cause of agriculture, requires all the support which a benign and benevolent Government can give by legislation. But it is a matter of deep regret that such an important and beneficial tenure escaped the notice and consideration of the legislature, from the commencement of legislation by British Government in Bengal, and it is really painful to see that the first attempt at legislation in this direction, aims a deathblow to this tenure which have survived all the vicissitudes and revolutions that time has wrought. But I confess that this tenure, like all others, has been, in its working, attended with abuses which are attributable more to the neglect of the legislature to give in protection for upwards of a century than to any inherent defects in the tenure itself. All that was required to be secured and protected by legislation was (1) to provide for a timely reaping and enjoyment of the produce by both parties, (2) to secure fairness in *danabandi* in time of dispute, (3) to preserve a proper record of appraisement and division when they were on good terms in order to prevent future disputes and institution of false suits and setting up of false defence, regarding such appraisement and division, that is to say, that if the landlord had made an *agorbatai* he might not be able to see on the allegations of a *danabandi*, and similarly if the ryot had accepted a *Danabandi* and enjoyed the crops, he might not be allowed to set up a defence of *agorbatai*, (4) to prevent the ryot from neglecting the proper and timely cultivation of his fields, (5) to prevent each of the parties from forcibly and surreptitiously removing the crops from the fields or *khalyans* to the detriment of the rights of the other; and (6) if practicable to define the respective shares of both parties in produce. But in my humble opinion the remedy which the Bill provides is worse than the disease. This brings me to the consideration of the different provisions of the Bill regarding the bhowli tenure, at the outset of which, I might say that matters connected with this tenure which urgently required legislation, in order to protect the rights of the partics and to improve and to strenghrhen its working, have not received that amount of consideration which their importance demanded. The provisions of the Bill regarding this tenure are to be found in sections 53, 81, 82, and 83, section 53 gives a right both to an occupancy ryot and his landlord, to effect, by application to the Collector, or any settlement revenue officer, a forcible conversion of the bhowli tenure into a nakdi one. This provision, revolutionary as it is in its character, is altogether new and uncalled for as neither the landlord nor the tenant ever demanded it. Instead of improving the position of either the tenant or his landlord, the section would involve them in those heart-burning disputes regarding enhancement and abatement, which have hitherto been altogether unknown. Besides it is open to the objection that it encroaches upon the rights of both the parties. The zemindar has enjoyed, from time immemorial, the right of availing himself of the increase in the yearly produce of the land and of the rise of the market value of the grain, and thereby profiting himself by such increase and rise, while the ryot, on the other hand has enjoyed the privilege of paying no rent at all when there was total failure of the crops, or of paying such rent only as the actual produce of the land would permit in

certain fixed properties already alluded to before. This provision would thus be very distasteful both to the landlord and to the tenant, and would be looked upon with distrust as it might be used by either of them as a handle to harass the other, under circumstances which may chance to be favourable to the one and unfavourable to the other. An ease-loving and indolent zemindar, would only be too glad, if he be able, to force upon his tenants a fixed money-rent, thereby relieving himself of the duties and care of a bhowli landlord. Similarly a well-to-do ryot, who, having other sources of income, does not care for the cultivation of his land so much, and happening to entertain some ill-feelings towards his landlord, would not scruple to take advantage of this section and by inducing other ryots to join him, to use it against a hard-working and active zemindar who spares neither pains nor energy to improve the agriculture of his estate, and thus to reduce his income and emolument even below the liabilities which his estate is subject to. However, at the same time, I must candidly confess, that this ancient and time-honored tenure, held as it is in high estimation by both landlords and tenants, in this part of the province, would render this section a dead letter with those landlords and tenants who, mindful of their interest and anxious to improve the agriculture, never consider the interest of the one as clashing against that of the other, and always work and co-operate with one another for the furtherance of the cause of cultivation. But it may be argued that if the section would remain inoperative as a dead letter, why raise any objection to it? To this my answer is, that if the section be allowed to stand on the statute book an unscupulous landlord or a revengeful ryot will ever try to use it as as a weapon to injure the interest of the one or the other, as the case may be. Then again the commutation of the bhowli tenure into nakdi one is surrounded with many difficulties. The principles laid down in clause (4) of the section, for determining the sum to be paid as money-rent, are neither so easy nor practicable as they might appear at first. The bhowli and the nakdi lands are so situated in any estate in this district and are so different and dissimilar with each other in their productiveness and the kinds of crops grown upon them, that it would be very difficult, if not impossible, to determine the money-rent of the former by the light of that of the latter in the vicinity with any degree of fairness to the emoluments of the parties concerned. It may here be observed that in this district, nakdi rent is fixed upon crops grown on the land and in the majority of cases it was fixed with reference to the crops then grown, at a time when grains were so cheap for more reasons than one, that it would be very unjust and hard upon the zemindar who has never altered the nakdi rent of his estate to compel him to convert his his bhowli into a nakdi estate, on the principle laid down in sub-clause (*a*) of clause (4) of this section which would reduce his emoluments to at least ½ or ¾ of what it at present and the bhowli system is. Then again how ruinous it would prove to the interest of a ryot the rent of whose Nakdi land, or of that of his neighbour, has of late been enhanced by a a rack-renting and unprincipled landlord, if he be forced to pay money-rent for his bhowli holding determined on the principle referred to above.

15. The principle laid down in sub-clause (*b*) which contemplates the determining of money-rent of of bhowli lands, on the average value of the rent actually received by the landlord during the preceding ten years, is as untenable and impracticable, as the other. "The preceding ten years" may either be a period of uninterrupted prosperity and plenty of crops in the agricultural community or just the reverse. If the former, the ryots are ruined in hard years, if the latter, the landlords are ruined for ever. But the difficulty is how to ascertain the average value of the produce for the preceding ten years.

16. Where to find a faithful and trustworthy record of the actual produce of the lands during that period. Can any reliance be placed upon that perennial spring of mischief, the patwarie's basta, for such a record, after what has repeatedly and strongly been said of it from every quarter? Will a dishonest and intriguing landlord ever scruple to fall back upon it, for the purpose of showing that the lands, during the preceding ten years, produced more than what they actually did, and can any ryot be safe from being rack-rented, if his holding is made a victim to that strange and fearful basta, which on the other hand may as well be turned against weak and honest zemindar, by the ryots combining and colluding with the patwari. Instances of such collusion with the patwari being not rare.

17. Thus both the principles for commutation of rent payable in kind as laid down in the Bill being open to serious objections in other principle or principles can be possible or practicable under the peculiar incidents of the tenure paying rent in kind. Even the wise suggestions made with regard to section 53 by the Hon'ble H. J. Reynolds in his memorandum of dissent is far from being sufficient to make the section free from any of the objections that I have ventured to point out in the foregoing paras.

18. With all due deference to the opinion of such an able, wise, learned and experienced legislator, I humbly beg to submit that while those suggestions seek to protect the interests of the ryots, thoy fail to extend that degree of protection to the interest of the landlord which justice and fair-play entitle him to. Altogether ignoring the material injuries which the interests of the landlord would suffer if this section be allowed to stand as it is, and be fully taken advantage of by vindictive and unscrupulous ryots, the suggestions proceed further to shape the section in such a manner as would undoubtedly make it exceedingly objectionable in the eye of every bhowli landlord, as it would stand in the way of all his future prospects and legitimate emoluments arising out of his personal exertions and care to improve the agriculture of his estate. The proposal that the money-rent should not in any case exceed

the rental at which the holding is entered in the landlord's road-cess returns may, at the first sight, appear to be just, but a little careful consideration would at once show that the basis on which the proposal is made is anything but just and fair to the landlord. For it is well-known that these road-cess returns are not what they profess to be and are far from being true and reliable. These returns were made at a time and with motives which would at once render them quite unfit, if not utterly unsafe, to be treated with any degree of weight or importance. These returns invariably underrate the actual rentals to which they relate as they were made with interested motives. It is not the object of the present Bill to punish the zemindar for what he might have done long ago; and yet it is proposed to inflict a heavy penalty upon him for the returns being not what they ought to have been. In many cases the zemindars who made them are no longer in possession of the estates, and in accepting the rental entered in them as the maximum limit of money-rent for a bhowli holding the income of such zemindars would not only be lowered, but it would be punishing them for the faults of those upon whom they could have no control. Even assuming that these road-cess returns are correct, they cannot and ought not to be taken into consideration in calculating the money-rent of a tenure paying rent in kind, as nearly ten years have elapsed since they were first made, during which period vast improvements have been made and the value of the holdings have increased. It is also noteworthy that these returns showed the average rentals of the years 1280 and 1282 F. S. corresponding with September 1873 to June 1875, years in which this district was visited with famine on account of ailure of crops. No return since then has been made in the district.

19. Nothing can be more unjust and nothing at the same time can be more detrimental to the intersts of a zemindar than to lay down such a hard and fast rule that the money-rent shall not in any case exceed the rental at which a holding is entered in the road-cess returns. While thus the income and emoluments of a tenant will increase with the increase in the productive powers of the soil and rise in the price of grains, those of the poor landlords are attemped to be curbed and curtailed in many cases below his liabilities and are allowed to proceed so far and no further.

20. It is no wonder therefore that the zemindars of this district look upon such a suggestion with feelings of alarm and despair. The proposal to make a substantial deduction in favor of the ryot "in consideration of the whole risk of cultivation being taken by" him tends only to add gall to bitterness. If such a deduction be allowed to the ryots, would not the zemindars be justified in demanding that a substantial addition should be made in their favor in consideration of the benefits and advantages which the ryots will derive from the existing improvements which were chiefly effected by their capital and exertions? Considering, then, the peculiar nature of the bhowli tenure and the benefits which are derivable therefrom, considering also that this tenure has been in existence from time immemorial and that both landlords and tenants thereunder have always regarded it as highly beneficial to the interests and welfare of both, any attempt to do away with this ancient tenure, sanctioned by long usage and accepted by the people as a source of blessings to them, is not only uncalled for, but is detrimental to the cause of agriculture and subversive of the rights of the parties. Any such attempt should be given up as hopeless, as it is not possible to devise any practical principles of commutation, fair, just, and equitable to the parties concerned. No possible apparent good, either to the landlord or to the tenant, does the provision of section 53 secure; but it appears to have been introduced into the Bill simply with a view to remove the seeming anomaly which this tenure, notwithstanding its intrinsic and inherent virtues, present in comparison to tenures prevalent in other parts of Behar and Bengal. But as we cannot possibly alter the natural features of this district and its peculiar circumstances under which this tenure has lived and grown up, we cannot, by any legislative enactment, remove the anomaly without causing immense injury. In my opinion, therefore, which I share with the other landlords and the tenants of the district, the provision of section 53, together with that of clause (*b*) of section 210, which seems to have been made with a view to strengthen it, should altogether be eliminated. The conversion or otherwise of this tenure had better be left in the hands of that powerful, but silent and quetly working legislator—Time.

21. The provisions of section 83 read with section 220, clause (*c*) and section 99 sub-section (2) are more revolutionary and destructive than those of section 53. have already shown that the crops, being grown on the lands in which both the landlords and the tenants have vested rights, and being protected and reared by the joint capital and combined labor of both, ought to be, as they have always been, considered as their joint property in their joint possession, and that both of them have, from time immemorial, treated and dealt with them as such. The principles of law and equity which govern the enjoyment and possession of joint property ought to regulate, as thoy have hitherto been doing, the crops of the bhowli lands. But the provisions of section 83 place the bhowli crops, whether subject to appraisement or division in the exclusive and entire possession of the ryot, in total disregard of the rights of the landlord to the joint possession therof. The penalty clause (*c*) of section 220 of the Bill, would make the landlord's interference with the cutting or removing of the crops, an offence of the criminal trespass within the meaning of the Indian Penal Code; while section 99 would prevent the zemindar, without the consent of the tenant or the written permission of the Collector, from making any measurement except in certain cases specified therein. The exceptions

attached to sub-section (2) would only cover measurements when the rent varies with the area affected by alluvion or diluvion and varying from year to year, and when the rent depends upon the area under cultivation, and such area varying from year to year. But none of these exceptions are explicit and wide enough to cover the measurement of the bhowli lands for the purpose of appraisement where the rent depends not so much upon the area under cultivation as upon the actual produce of the lands. The provisions of these sections, while they contemplate to give every protection to the ryot and to create new rights for him, deprive the landlord of his rights to enter into fields for the purpose of making appraisement and superintending the reaping, gathering, or dividing of the crops and of preventing the surreptitious or fraudulent removal of them before appraisement or division. If these rights of landlord, which he has so long enjoyed without disturbance and interruption and without any prejudice to the interests of the ryots, be so suddenly and summarily taken away, he will be thrown off and placed at the absolute mercy of his tenants with regard to the timely reaping and gathering of the crops, and will be rendered utterly powerless in protecting himself from fraud and other acts of bad faith on the part of his ryots. When the rent payable to the landlord depends upon the actual produce of the fields, and when the increase in such produce mainly depends upon his care and capital, could any thing be more unjust and hard upon him, more distressing and disheartening to him, than to take away from him the right of protecting himself and his interest from foul play and fraudulent act, and of seeing that his legitimate income and just emoluments do not suffer at the mere will and pleasure of his tenants, who, being in absolute and exclusive possession of the crops can do with them as they please, without any fear of immediate and effectual interference on the part of the landlord. There are many crops grown in the bhowli lands yielding edible pods and peas which require a great deal of care and vigilance for protection from being eaten up by men, while they are yet unreaped and unremoved from the fields. With regard to the proper protection of such crops the landlord is left at the tender mercy of his tenants. It is notorious that, in spite of the vigilant watch which is kept over such crops while they are in the fields both by the tenants and the landlords' men, they are not safe from being eaten up by greedy passers-by, and from being plucked off by the children and women of those tenants themselves who are far from being well-to-do. Can the interests of the landlord with regard to these crops be properly guarded, when they are in danger of being devoured up at an early stage, not only by other men, but by the tenants themselves, and when the landlord dares not for fear of criminal prosecution, interfere and rescue them from such waste and misappropriation. While the poor landlord is liable to be criminally prosecuted for trespass if he prevents or attempts to prevent the ryots from "*otherwise dealing with any produce of a holding*" what penalty is provided for for the tenants if they commit, as being thoughtless and improvident they are sure to do, any acts of bad faith with respect to the crops that are henceforth to be left in their exclusive possession, except the vague and soothing provision of sub-section (4) of section 83, which will sound well in theory, but will scarcely work satisfactorily in practice? Is this fair dealing and meting out even-handed justice to the parties concerned? Mark the words italicised above. Let the tenant deal with the produce of his holding as he likes, the landlord shall not interfere; if he feels himself aggrieved or injured by any acts of his ryots, he must go to the civil court and undergo all the expenses, anxieties and embarrassments of a litigation before his grievances can be redressed and his injuries remedied as against the ryots. The landlord is to be handed up before the criminal court, even for the slightest attempt on his part to exercise his hitherto undoubted rights on his own property, while the ryot's body is not to be touched even for the grossest misappropriation of the crops. If the tenant removes any portion of the crops before appraisement or division, all that is left to the landlord for the remedy is to sue for his share in the crops so removed which shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest. So if the zemindar attempts to touch the crops he must be dragged to the criminal court; if the tenants actually remove them, he must be forced to go to the civil court, where he must prove, before he can succeed, that there has been a removal and that similar land in the neighbourhood produced a certain quantity of crops of the same description. If he satisfactorily discharges the burden of proof that would thus lie upon him, right and good, but if he fails to do so, or if his case is knocked down on some legal technicalities, he must not only lose his share of the crops, but must be saddled with all the costs of the litigation. That the landlord, when the ryots combine against him, must fail is any thing but certain. In the event of such combination, how difficult it would be for him to procure evidence on those points which he must establish before he can make out *primâ facie* case against his tenants. What can be the best of proofs on those points, unless it be the evidence of some of the neighbouring ryots, and how can he expect to avail himself of such evidence if the ryots rise in a body against him, with the intention of causing material injury to their landlord. Instances of such rising among the ryots of the Surfa class are not wanting. Then, again, the sub-section (4) though it appears to assume the garb of a penalty clause and a preventive measure, would rather encourage, than put down, the removal of the crops, before appraisement or division on the part of a ryot, in cases in which the land of that ryot happens to produce the best, fullest and most plentiful crop in the neighbourhood, as such removal would unquestionably lead to his advantage and gain, even if he be sued in the Civil Court to contribute towards the share of his landlord. Having obtained more, he will not hesitate nor feel to give less to his landlord. While the section

recognizes the *agorbatai* system of appropriation of the bhowli produce by both the parties, the essence of which being that the crops should be reaped, gathered and thrashed under the watch and supervision of both, and that neither of them should, before division, remove or appropriate any portion of them, section 220, clause (*c*) by making the zemindar's interference, as a criminal offence, gives full liberty to the ryot to bring only as much as he wishes to the *khalian* and to take as much as he pleases to his home, in which case the zemindar would have greater difficulty, in availing himself of the benefit provided for in sub-section (4). This section in the hand of an unscrupulous and oppressive landlord, may be worked to the ruin of the tenants of the *reyan* class. Such a zemindar having allowed appropriation by *danabandi* or *agorbatai* may yet go up on alleged removal of the crops without his consent by the ryot and force him to pay up in accordance with the measure provided by sub-section (4). Such an unscrupulous landlord, fond of litigation and calculating upon the support of some of the ryots of the superior classes either of his estate or of a neighbouring estate might always find it to his advantage, to seek the benefit of sub-section (4) to compensate the loss to him, by deficiency of crops, which might be due to his own negligence or indifference to maintain the irrigation works, rather than to any fault on the part of his tenants. The difficulty of successfully supporting his claim under the said sub-section might compel a zemindar, who has hitherto been honest, to fabricate evidence and to commit perjury. These provisions seem to have been introduced either as a measure to compel the landlord by making his position as difficult as possible, to apply for commutation into nakdi, the impolicy and evil consequences of which have already been pointed out, or with a view to ensure timely reaping and appropriation by the ryots, of their share in the produce of the bhowli fields; which have been well provided for in sections 81 and 82. Magistrates and sub-divisional officers are supposed, during their winter tours, to visit almost every village, and where they would see that, in consequence of any dispute between the parties, the reaping of the crops has been delayed, they can, with or without the complaints of the parties, move the Collector for an order under those sections. But for whatever reasons introduced, these provisions which tend to encourage smuggling and misappropriation on the one hand, and perjury and forgery on the other, and are at the same time subversive of the rights and detrimental to the interests of the parties, and opposed to long established custom, should find no place in a Bill which seeks to secure and protect the rights and guard the interests of either of the parties against the aggression and encroachment of the other.

22. It may here be noted that the Bill does not provide for the insurance of the genuineness and authenthecity of *danabandi* papers prepared when the parties are on good terms, to prevent the possibility of the landlord suing the tenants on papers forged subsequently for the purpose, and to restrain the ryot from setting up a false plea of *batai* (division) when he had really accepted *danabandi*, or the landlord from suing on *danabandi*, when there was an *agorbatai*. Disputes, false suits, and false defence, of this nature are of more frequent occurrence than the actual disputes regarding the propriety and fairness of appraisement or of division.

23. The land-lord's rent depending upon the actual produce of the field for which, as shown before, he annually spends large sums of money and undergoes hard labour and endless trouble, it is but just and fair that he should have the power, which he has under the custom regulating the tenure, of preventing the tenants from neglecting cultivation or growing indifferent crops. The ryot not being liable to pay rent for any portion of his land left uncultivated, may, if evilly disposed, leave the land fallow or throw bad seeds out of time, with a view to diminish the profits of the landlord, and cultivate only so much as he requires for his own purposes. At first sight, it might look absurd that a ryot could do an act which would cause loss to him. But cases of such neglect of cultivation have actually occurred among ryots of the superior classes, many ryots of the Brahman, Babhon, Rajput Pathan or Malik caste having an extensive *Jote* would not care leaving a good portion uncultivated, if by so doing, they could reduce the *Juma* of the village and compel their landlord to quietly walk out of the village or the estate. Many of these being descendants of former proprietors, do not like to bear the yoke of the landlord not of their own kith and kin. The serious riots which followed the execution sale of the Kowa Koll estate in this district, by the ryots combining with the Tekait family, to prevent the purchasers from getting a footing in the estate, must always be fresh in our mind, as illustrative of the strong feeling of aversion which certainly this class of ryots entertain against new proprietors. If the old records of the Criminal Court be turned over, Kowa Koli would not be the only and solitary instance of this. When the ryots are told and made to understand that they have the option of cultivating only as much as they wish or please, without any risk or liability, they would find an easy and convenient means of getting rid of an obnoxious landlord. In lieu of the hard struggles and fights for the purpose at the risk of going to jail. Instances of well-to-do ryots, who can well afford to purchase the estate in which they live, are not rare. Bhowli landlord, unwilling to sell, may thus be forced by these ryots and their brethren omitting or neglecting to cultivate for no longer period than 2 or 3 years. Again a neighbouring landlord might, by purchasing a few tenants' right of occupancy, do the same.

24. The Behar Rent Commission made a suggestion to provide against such acts and omissions on the part of the tenants, so prejudicial to the interests of the landlord. But it did not find favour with the Bengal Rent Commission who, not foreseeing the loss and annoyance

to which the landlord might be put, and led away by an erroneous supposition that the bhowli ryots paid rent as high as half the gross produce of his fields, held that he should have the option of cultivating as much as he likes. A provision like this would be dangerous to the landlord and place him at the tender mercy of the designing, turbulent and litigious ryots of the superior class, whose number in this district, as stated above, is large enough. The interest of the landlord required some provision like the one suggested by the Behar Rent Commisson or any other, to enable him to exact from the tenant timely and proper cultivation. But it is alarming and distressing to find that the provisions of section 31, clause (*a*) and section 58, clause (*b*) taken with the absence of any provision to the contrary give both to occupancy and non-occupancy ryots, the option of cultivating any portion of their holdings or growing any crops they would like. I might add that such a provision regarding bhowli land might lead the landlord to neglect or be indifferent to, the irrigation works which in the present state of the district will be extremely harmful.

25. This district is dissimilar with other parts of Behar and Bengal, not only with regard to its bhowli tenure, but it presents features of dissimilarity with regard to its *nakdi* tenure as well. The nakdi tenure here is of two descriptions, *shikami* and *chikuth*. *Shikami tenure* is that under which the landlord has not, or at any rate, is presumed to have not, any power of enhancement irrespective of the period for which the tenant might have been in possession thereof. The money-rent is not fixed upon the land but upon the crops actually grown, varying with the nature of the soil and the class of tenants whether *Surfan* or *Reyan*; the former having a lower rate to pay than the latter. The lands which are generally cultivated under *shikami* tenure are the best land lying on the boders of the inhabited portion of the village, called *dihans* land; and crops grown thereon pay the higher money-rent than the same crops grown upon fields more distant from the village site. It is for this reason that almost every village in Gaya has fixed rates of rent for different kinds of crops with reference to the different part of its land and different classes of tenants inhabiting it. Crops generally grown under the *shikami* tenure, are those of the *bhadoi* (autumn) and *rubbi* (spring) harvests. Hence every village for every class of ryots and for every plot (*kita*) of land has a fixed rate of rent per *bigha*, for *murua* and *posta*, and an inferior rate for *murwa* and *rubbi*. For example a Babhun ryot growing *murooa*, *marhua* and *posta* on a particular land reserved as *shikimi* in a particular year, would pay the rent, at the rate for *marhua* and *Posta* fixed for ryots of his caste, but he should be liable to pay an inferior rate of rent, if on the same land, he would grow *murhua* and *rubbi* the next year; and *vice versâ* similarly a ryot of the inferior class would pay a higher rent for the same kinds of crops grown upon the same land. Every ryot of an estate has a fixed quantity of *shikam* land, partly at the rate of *murhua* and *posta* and partly at the rate of *marhua* and rubbi. If the ryot grows, with the consent of his landlord, poppy upon a bhowli field, he pays for one harvest bhowli rent and is liable to pay nakdi rent for the poppy (*posta*) at the rate fixed in the village for the particular class of ryots to which he belongs for poppy grown under such circumstances. There are certain crops which from their nature cannot be the subject of either appraisement or division under the bhowli system, such as sugar-cane, and cotton (*banga*) and as they cannot thrive if grown on the same land for consecutive years, they are generally, with the consent of the landlord, grown upon different plots of bhowli lands in different years. Every village has thus a sugar-cane rate for each class of ryots and for every plot, and similarly a *banga* rate. The ryot must pay for sugar-cane and banga, the sugar-cane and banga rates of his village fixed for his class of tenants even when he grows those crops upon his *shikami* or *chikuth* land which he seldom does. In some villages there is also *dhan shikami*, the quantity of which is small. In addition to these crops, there are other crops called *jethwa*, or summer crops for which, so far as I have been able to ascertain only one rate prevails throughout the district without reference to the class of ryots, *viz.*, one anna per *cutha* or $\frac{1}{20}$ of a bigha which is $2\frac{1}{4}$ times as large as a Bengal *bigha*. He has to pay for the jethoa crops, only when he grows them upon the bhowli lands, but not when he grows them upon his *shikami* or *chikuth* land. Thus it would be clear that the so-called Nakdi land of Gaya is not really so but only a form of bhowli paying money-rent for crops, which, from their nature, do not admit of being delivered in kind. Every ryot of whatever class, whether he has held his *jote* from the time of the permanent settlement, or whether he has recently settled in the village and commenced cultivation, has to pay for such crops, the same rate of rent which is fixed for his class of tenants in that village; and the custom which regulates this kind of tenure does not recognize any right in the landlord to alter the village rates of the different crops for which under the custom, money-rent is payable. Thus a ryot, whether he has acquired the estate of a ryot holding his jote from the time of the permanent settlement or that of an occupancy ryot or not, enjoys, as regards enhancement, all the rights and privileges guaranteed by Act VIII of 1869 (B. C.) to a ryot holding at fixed rates from the time of the permanent settlement. The records of the courts here will show that no landlord ever brought any suit to alter the established village rates of any crops against any ryot, new or old. But the custom has not been so with reference to the *chikuth* tenure, which is a temporary settlement of waste or uncultivated but culturable lands, for limited terms of years, at nominal rents for the purpose of reclaiming or bringing them under cultivation. This tenure is governed and regulated by the terms of the contract between the parties. The ryot can never claim the right of occupancy in them, nor protection from enhancement after the expiry of the terms. When such lands are thus properly reclaimed and brought under cultivation, and

become capable of producing any crops as full as those of the surrounding, or neighbouring bhowli or *shikami* lands, the landlord, at the end of the temporary settlement, is entitled under the terms of the contract to settle them, as a rule with the same ryots as *shikami* or *bhowli*, or with others when the former, as is seldom the case, do not wish to cultivate them under the bhowli system or at *shikami* rates as described above. If one term be not sufficient to render the lands fit for proper cultivation, the settlement is renewed from time to time till they become capable of yielding full crops. It may here be mentioned, in passing, that packa wells for irrigation of *shikami* crops or *chikuth* lands, are constructed by the landlord at his cost. It might also be added that no rent in this district is charged for pasturage or for homestead lands of actual cultivators. *Motaharfa* or rent for homestead land is taken from shop-keepers and other inhabitants of the village who are not of the Surfa or the favoured class and who have no cultivation whatsoever.

26. The above description of the tenures which prevail in this district, was necessary for the purpose of of properly understanding the bearing of the various sections of the Bill upon them and the manner in which they are affected thereby. I have already examined the provisions of the Bill regarding the bhowli tenure which is the most vital structure in the whole agricultural system of the district, as briefly as, with due regard to the importance of the subject and the gravity of the questions involved, I possibly could.

27. In addition to what I have said on the several sections bearing directly upon the bhowli tenure I now beg to offer such remarks on rhe other parts of the Bill as have suggested themselves to me. The definition of "*estate*" as given in section 3, sub-section (1), read with the provisions of chapter V, sections 25 and 26, is rather inconvenient and open to objections. In this district, as well as in other parts of Behar, land, registered under one entry in the Revenue Register, prepared under Act VI of 1876 (B. C.) includes several villages. Lot Sribnagar registered under one entry contains about villages extending over an area of square miles, situated in different parganahs. Taluka Bilkhora has ninety main villages, besides as many hamlets or more. Unless it is meant that a ryot, having a right of occupancy in one of these villages, should have that right with reference to the lands in all of them, the word "estate" should either be removed from sections 25 and 26, or its definition modified.

28. The popular conception of a tenure-holder is that which is combodied in the provision of section 5, sub-section (1). But the Bill proposes to include two other clauses under it which are altogether new, *viz.*, (1) a ryot who has sub-let more than half of his holding; (2) a ryot who holds 100 standard *bighas* which in these districts would mean $\frac{400}{9}$ (or $44\frac{4}{9}$) bighas, and who has sub-let whole or part thereof. There seems to be no reasons to give such ryots as these the name or position of a tenure-holder. Notwithstanding this name the Bill subjects them to the same rules of enhancement which an ordinary occupancy ryot is subject to. It is suggested in the Government of Bengal's letter that it would exercise as a check upon sub-letting, but in my humble opinion it would rather encourage it than discourage it. Any temporary farmer of any estate might succeed in purchasing all the royti holdings and by sub-letting convert himself into a permanent tenure-holder and prevent the landlord from ever getting *seer* or direct possession of his estate. Thus while these new provisions confer no benefit upon the actual cultivator of the soil, and rather tend to make their position worse, they trench upon the rights of the proprietor. No ryot holding 100 bighas or more has, as is wrongly assumed in the Government of India's letter, ever been regarded as a tenure-holder.

29. Tenures in this district, as defined in section 5, sub-section (1) are only such as have been created by contracts between the parties and are governed by the conditions and terms therein stipulated. They are not subject or liable to enhancement or cancelment, except under the conditions of the contracts. Whether temporary or permanent, they are transferable, some under the terms of the contract and others by local custom. I do not therefore possess sufficient information so as to be able to express any opinion as to the fairness or otherwise of the rules of enhancement laid down in sections 7 to 10 in the Bill.

30. The descriptions which I have given above of the tenures in Gaya will bring all its ryots without reference to the period of their cultivation as regards their bhowli and *shikami* land within the class of ryots holding at fixed rates as defined in section 4 sub-section (3) clause (*a*), and confer upon them whether they are occupancy ryots or not, indiscriminate and unlimited power of alienation which it is not deemed necessary or expedient to confer even upon occupancy ryots. Clause (*b*) of section 23 would protect even a ryot who has succeeded very recently in getting any portion of either *shikami* or bhowli lands against eviction, even if he would render the land unfit for the purposes of tenancy, and his holding would under section 182 be sold, subject to incumbrances and even in execution of decrees—privileges not enjoyed by ordinary occupancy ryots. The classification of ryots, hithereto recognized, both by law and in practice, consists of three classes of ryots, *viz.*, (1) ryots holding at fixed rates from the time of the permanent settlement; (2) ryots not so holding but having right of occupancy; and (3) ryots neither so holding nor having any right of occupancy. This classification is an exhaustive one and should not be interfered with and sufficient provisions having been made for the protection of all these classes of ryots, section 23 might be omitted without any detriment to the existing interests and rights of the tenants, as far at least, as the Gaya ryots are concerned.

31. The difficulties which generally attend a ryot in carrying on cultivation, and the inconvenience to which not only he but his landlord or landlords are put if he possesses lands in different villages or under different proprietors, as well as the detriment which is occasioned to the cause of agriculture by his holding lands in various villages under as many proprietors, should make it highly desirable that a ryot having a right of occupancy in a village must be made or induced to reside in that village so that his interests may not suffer, and that timely and proper cultivation may not be delayed or in any way prejudiced by any possible friction between the rival landlords of the different villages. As a rule, a ryot attaches more importance to his interests in the village where he has residence than to those in other villages where he has his cultivation only. It not very unfrequently happens that in disputes between his several landlords regarding water and irrigation works, he would take the side and embrace the cause of that landlord in whose village he has both his residence and cultivation, whether that cause is just or unjust, to the great deterioration of cultivation in those villages whose cause he has left or neglected. Instances have also occurred of a ryot who holding his *jotes* under two proprietors who are on fighting terms with each other, has been actually influenced and induced by the landlord in whose village he resides, to neglect his cultivation in the village of the rival landlord and thereby has caused loss to the latter, without incurring the liability of paying rent for the lands so neglected as they are mostly under the *bhowli* system. For these reasons, based as they are on local knowledge and experience, the Behar Rent Commission deemed it not only expedient but indispensably necessary to make residence as an important and essential element in the acquisition of the right of occupancy by a ryot. Residence therefore should not be lost sight of as an essential condition to the acquisition and maintenance of the right of occupancy by the ryots, if not of whole Behar, at least of Gaya, which differs materially from other parts of Behar in the peculiar nature of its tenure and agricultural circumstances. But Chapter V of the Bill which treats of occupancy ryots have introduced changes in the existing law regarding landlord and tenant, which although they shower innumerable benefits, hitherto unenjoyed, upon the ryots, would tell very hard not only upon the landlords, but would also under peculiar circumstances prove injurious to the interest of the ryots themselves. The provisions of sections 25 and 26 as they stand at present would tend, as soon as the Bill is passed into law, to convert all lands held by ryots as such, whether they have occupancy rights in them or not, into holdings with occupancy rights permanently and inseparately attached to it. There could have been no serious objections to these salutary provisions for the ryots had they not threatened to demolish some of the long-established and vested rights of the zemindars and strengthen the position of the former by undermining that of the latter. No provisions, how beneficial soever it may appear or prove to a particular section of the community, should find favour with a just and benevolent Government, as our Government undoubtedly is, which seek to ameliorate the condition of the one at the sacrifice of the cherished interests of the other but equally important section of the same. The definition of "settled ryots" as given in section 26 is so sweeping and comprehensive as to include and take in within its wide and almost unlimited range every class of ryots, however small and insignificant their holdings may be, provided they have held a bit of land as such in any village or state, giving them the benefit of extraordinary presumption, as specified in sub-sections (2), (3), (5), (6), and (7), only one of which (sub-section 2) being rebuttable. In many cases it would be extremely difficult for a zemindar to rebut such a presumption, as he might not be in possession of all the evidence required for the purpose, especially when an estate is owned by several proprietors not on good terms with each other. The presumptions which are not irrebuttable would operate with redoubled hardship against the bhowli landlord, especially those in sub-sections (6) and (7), as they would prevent the landlord from settling the land abandoned by a ryot with any other ryot for at least three years, and he will fail to induce any ryot to accept such a temporary settlement for so short a time; for section 96 gives the ryot so abandoning a right to bring a suit within the time prescribed therein. This section 25 with the definition of "settled ryot" as given in section 26 would confer rights of occupancy upon all settled ryots, not only in the lands held as such by them in a village or estate, but in those also which they may hereafter acquire, no matter how and where, provided only that they may hold such land as ryots. Henceforth all that would be requisite for a ryot to acquire a right of occupancy in lands in a village or estate that may come into his possession subsequently after the passing of the Bill is to hold only a *dhoor* of land in that village or estate as a settled ryot. The provisions thus do away not only with the residence of the ryot in a village, but with the 12 year's rule, as well as the essential and guiding principle in the acquisition of the rights of occupancy in the lands held by him in that village. What the evil effects of these sweeping provisions would be are not far to see. They would inevitably give rise to disputes between the parties, of a novel but alarming character, by creating a feeling of jealousy and ill-will against each other, and destroying that peace and harmony between them which are so indispensable for the furtherance of the cause of agriculture in the interests of both. These provisions would also go very deep to sap the very foundation of the tenure which is known in this district under the name of *chikuth* lands, which have already been described, and with respect to which, no ryot, whether settled or not, has any right of occupancy, and which from the operation of the terms of contract regulating the grant of such lands are liable to enhancement of rent from time to time, until they are capable of yielding the ordinary full crops produced in the bhowli or shikami lands in the village, and are converted into either of those descriptions of lands, unless the provisions of section 212 be so warded and

extended as to govern these *chikuth* lands with retrospective effects. Under section 31 of the Bill, right of occupancy is transferable and capable of being sublet; and under sections 32, 33, and 34 the landlord (a proprietor or permanent tenure-holder, or any other tenure-holder expressly authorised in that behalf by section 36 clause (*a*)) is allowed to exercise the right of pre-emption on voluntary sale or sale in execution of occupancy right, and to take the place of mortgagee on foreclosure when such occupancy right is subject to mortgage. But on the principle that inferior title merges into a superior one the moment the landlord's title on purchase, pre-emption or foreclosure, is completed, the right of occupancy would at once cease under section 28. But if the landlord having thus acquired land with the right of occupancy, settle it with a "settled ryot" of his village or estate, that ryot would at once acquire right of occupancy therein by the operation of section 25. Section 42 would prevent him from settling it with any "settled ryot" of his village or estate on any higher rent than what was paid by the former tenant except on conditions mentioned in section 41. The case would appear to be otherwise if the land be let out to one who is not a "settled ryot," or if it be sublet by a purchaser other than a landlord. If the purchase be made by any person other than the landlord of the village or estate in which the land is situate, the right of occupancy would not be extinguished, and section 62 would give him the power of settling by a registered contract at 50 per cent. on the rent paid by him to his landlord. The landlord beyond keeping out a stranger from his village or estate, gets no benefit out of the trouble and expenses of making the purchase. It amounts to this that, he must not purchase or exercise his right of pre-emption at all, or if he does, he should not give it to any "settled ryot" of his, although that ryot might be in great need of land for cultivation and ready to take it on any reasonable terms. The landlord would give it to him only who would pay him the highest rent, or cultivate it himself if he be able to do so. That such restrictions would be more injurious to a bhowli landlord, needs no further demonstration after what was already been said of the bhowli tenure. I have only to remark, while on this part of the subject, that after having given it the best and most careful consideration that its importance deserves, I fail to see why different rules should regulate the rights of purchase when made by different classes of men, and deprive a landlord purchaser of those rights which a common purchaser would enjoy.

32. On the right of transferability and sub-letting, I have to say that I was once in favor of it. But further consideration has induced me to change my opinion. It was at one time believed that in this district at least there was custom of transferring. But evidence, both oral and documentary, given in a case which arose in this district in connection with one of the escheated estates, and the finding of the courts thereon have satisfied me that that custom is uncertain and not fully and clearly established. One Sital Pershad, a mukhtar of the criminal courts here, was for some time the ticcadar of a small share in the village Simuatali. During the time of his lease he managed to purchase some tenantry rights and sub-let them to some of his vendors, as well as to other ryots of the village at very high and exorbitant rates of rent, both bhowli and nakdi. When Government took possession of the estate under a decree of the civil court, it refused to acknowledge Sital Pershad's purchase, as by it he had converted himself into permanent tenure-holder between Government, the proprietor, and the actual cultivators of the soil. The arrangement was ruinous to the ryots. Sital Pershad instituted a civil suit against Government and the ryots, claiming to justify his purchase by a custom which was alleged to sanction alienation of occupancy rights. The suit was defended by Government on the plea that no such custom did ever exist. Sital Pershad brought forward a good deal of evidence, oral add documentary, to prove the alleged custom, but the evidence could not show a single instance of alienation of occupancy rights made without the knowledge or consent of the landlord, notwithstanding that such evidence stood unrebutted, Government depending mainly on facts elicited in cross-examination. The courts held that the custom alleged by the plaintiff did not exist, and that the plaintiff's suit should be dismissed as against Government. Mr. Porter, while disposing of the appeal in his judgment, which has since been confirmed by the High Court, after reviewing the evidence, remarked":—It seems to me therefore, the plaintiff has entirely failed to prove the custom which he pleads, *viz.*, that rights of occupancy are transferable in this district without the consent of the landlord. There is no doubt that the rights of tenants are sold as well privately as in execution of decrees. In the latter case they are usually purchased by the lessees or the landlord, as the case may be, and in the former by other ryots or by speculators, but in all such cases it depends upon the good-will of the landlord whether the transferee is recognised or not." Further on, in answer to the complaint of the learned Counsel for the appellant that it was hard upon his client, a *bonâ fide* purchaser, he said:—"Moreover it would be much greater hardship if speculators or lessees were allowed to purchase the rights of occupancy from the cultivators and without themselves cultivating the same, form another link in the chain of middleness between the landlords and the tenants. I need hardly point out the annoyance and harassment to which a landlord might be subjected by a custom of this kind." This was the only case in which this point was raised and judicially decided. This case, which was so hotly contested, affords clear evidence of the extent to which the abuse of this power of transferring and sub-letting might be carried, not only to the "annoyance and harassment" of the landlord, but to the ultimate extirpation of the peasantry and the creation of "vicious" class of middlemen. There can be no doubt that these middlemen who would have to pay all the liabilities of the former tenants would, with their sub-lessees, try to make as much profit as they can by means lawful or unlawful. In the case of money-rent, the Bill (section 62) gives to such middlemen the power to demand

profit to the extent of 50 per cent. on the rent which they have or shall have to pay to their landlords. The Bill has made no provision, however, limiting the extent which the bhowli rent might be raised by them. Assuming that they would only take half of what they would have to pay, the actual cultivators would have only $\frac{5}{33}$ or 15½ per cent. of the grain-produce besides chaff and straw. If this be deemed a sufficient share of an actual cultivator under a middleman, why not of a cultivator under the zemindar direct? But a cultivator who would only get $\frac{5}{33}$ of the grain-produce, would hardly find any encouragement to keep on cultivation. The creation of such middlemen which the Bill contemplates, prejudicial both to the landlord and the actual cultivators, increase the cause of dispute and discord which may tell seriously upon all agricultural improvements, especially in a bhowli country. It is curious to note this power of transferability is not to be exercised by the ryot unless he transfers the whole of his holding (*vide* section 97). The extravagant and heedless habits of the people, whether ryots or landlords, which make them spend large and enormous sums on marriages and other social and religious ceremonies, should always be kept in mind in disposing of this subject. Notwithstanding the strict provisions of the Mitakshara and the Mithila Law restraining alienations, how many families after families have been ruined by extravagant expenses. The cases of Babu Gouri Byj Nath and Ramratan Neogi, each of whom, till lately, commanded a princely income from landed estates, and who having within a few years had everything sold off, were reduced to extreme poverty, the one dying a beggar, and the other still going a-begging from door to door, are well illustrative of the danger which may arise out of this power of transferability. What assurance have we that the ryot, who is admittedly more ignorant, more thoughtless, and more improvident than his landlord, would not bring destitution and starvation upon himself and his children by the reckless exercise of this power?

33. Section 32 of the Bill provides, as a safeguard to the landlord against being put to annoyance and harassment, for the exercise of his right of pre-emption, and thus prevents the ryots' holdings from falling into the hands of money-lenders and other adventurers obnoxious to the landlord. This right, however, can only be exercised by a rich landlord. But how many of the landlords are so? Are not many of them over head and ears in debt, who are compelled to borrow, at exorbitant rates of interest, for paying Government revenues and other public demands, not to speak of petty landlords and shareholders? Where shall these get money to pre-empt? Even if they do, does not subsection 4, of section 32, which gives power to the tenant to refuse to sell after the pre-emption proceedings have been carried on at a heavy cost, leave them at the mercy of the tenants? This right of pre-emption will, I beg to submit, give no effectual protection to the landlord. But what provision has the Bill made to protect the tenants themselves against making reckless transfers? None whatever. The bar, which section 37 and section 38 contemplate to provide against sub-letting, *viz.*, that a ryot, who sub-lets more than half his holding, shall be converted into a tenure-holder, and that his sub-lease shall not inure for a term exceeding seven years, is in my humble opinion, no bar whatsoever. Shorten this period of the lease, the more advantageous it would be to the lessor. The conversion into tenure-holder would protect the tenant against evictions even in cases in which an ordinary occupancy ryot has no protection. Under chapter XV, the tenure if sold, would be sold euhject to encumbrances. A transferee, who is not a *bonâ fide* cultivator would rather immediately on getting the transfer, at once sublet, under section 62, the whole of the holding purchased by him in order to get the position and advantages of a tenure-holder. No doubt he would be creating a right of occupancy against himself in favor of the under ryots, but that is no loss to him, when we find that theryots of the real tenure-holders and landholders have rights of occupancy. Thus the provisions of chapter V, by taking away the rights of the landlord do not confer any corresponding benefit upon the actual cultivators, but at the sacrifice of the interest of both of them, "tend to increase the link in the clain of middleness." In this district ryots for want of means of proper cultivation do sub-let from year to year, with the consent of the landlord to the cultivators living with them in the same village. It would be unwise 'and inexpedient to stop sub-letting altogether. In my humble opinion it had better be left alone, to be governed by the custom prevalent in each district or estate. So, if it be deemed necessary to put upon the right of occupancy the incident of transferability it should be confined to the cultivators living in the same village with the transferar. To prevent land from falling into the hands of one persons more than he is capable of cultivating, the landlord might also with certain restrictions be allowed to pre-empt.

34. The peculiar nature of the ryotty tenure in Gaya does not at all embarass us with any question of enhancement. We would therefore look to the provisions of the Bill regarding the enhancement of the rents of occupancy ryots with an air of indifference. But as the Bill proposes to turns our tenures and the relation which have hitherto existed between landlord and tenants *topsy-turvy* into such a state as we have never been familiar with, the question of enhancement is forced upon us for the first time in the annals of the administration of the rent law in our district. It appears to me at first sight that the restriction, which the Bill imposes upon contracts between landlords and ryots is not based upon any sound principle, the only justification being the supposed inequality between the parties in all matters. I have already said that in this district, there are two classes of ryots, the superior and the inferior class, the former of whom, forming the bulk of the cultivators of this district, are certainly not on terms of inequality with their landlord. Then again, why the ryots, who are supposed to be

free agents in all ordinary dealings specially with relentless money-lenders, should not be left free to contract with the landlords? The parties should be left, as much as practicable, to come to amicable terms among themselves rather than be forced to go to court. Yet the provisions of section 41, and sections 43 and 44, are such as would tempt the landlord to go to court in preference to an amicable settlement for enhancement of rent, and subject himself and his impoverished tenants to the trouble and costs of litigation. To an unscrupulus landlord wishing to avoid the trouble and expense of going to court, the provision of section 41 throw a temptation of falsifying his records in order to make a private settlement advantageous to him. This section also throws upon the Registrar a duty of satisfying himself as to the fitness of the ryot to enter into the contract which he would be asked to register, a duty, which he would neither have time nor means to discharge. On the principles of enhancement I have to say that there seems to be no apparent reasons why a less rate of increase should be allowed in private contracts than that which can awarded by the court. The limit of 7 or 15 years according as the increase made is 2 annas or 4 annas per rupee seems to us to be quite arbitrary. When increase is asked for, for increase in price, the ryot is certainly entitled to a deduction for the increase in the cost of production. But as the Bill limits enhancement on the ground of a rise in the price to only 25 per cent, in would be necessary, if this limit be allowed to stand, to make any deduction for increase in the cost of production, as that limit would leave three-fourth of the increase to the ryot. On the other principles, limits, and rules of enhancement, I do not possess sufficient information so as to be able to give any opinion. Nor is any Gaya landlord or tenant able to give any information or opinion on the soundness of the principles of the Bill on this subject. It appears to us a mystery why the enhancement principles should be based on the value of the staple crops only, and not of the other crops, which are equally and some times more valuable.

35. The occupancy ryot acquires right in the land by occupation for a certain period of time which the non-occupancy ryot, who is a mere cultivator without any interest in the land, does not, and there is no equity on the side of the latter to entitle him to obtain an equalisation of the rules for the enhancement of his rents, with those of the occupancy ryots.

36. On section 69 of the Bill I have to observe that the case laws have hitherto recognized the landlord's rights to appropriate payments made towards the satisfaction of his arrears first, but section 69 leaves it to the option of the ryot to have the payment made appropriated to the arrears or to the current rent. Such an option to the debtor is injurious to the interests of the creditor. The practice among landlords and tenants had also been to appropriate payments first towards arrears, and then the balance towards the current rents.

37. I had formerly shared the popular belief, and followed the current of supposed authorities on the subject of the imposition of the abwabs, and, in accordance with what I then erroneously thought of the subject, I expressed, in the year 1877, my opinion that the abwabs were illegal cesses, and could not be upheld either by substantive law or case law. But on reference being made to me on the subject by Babu Bimola Charan, Deputy Magistrate, with regard to the escheated estates, I went as thoroughly into the subject as I could, and made a most sifting enquiry into the papers that might help the material solution of this knotty problem. The result of my careful and deliberate re-thinking of the subject and the examination of the papers of several villages for years and years led me to subsequently change my opinion and to come to the conclusion that, at least in Gya, the imposition of abwabs was not only illegal and unjust, but legal and justifiable. I then found on a close re-examination of law-books that there was nothing in the statute or the case laws against my changed view. The zemindars of Gya not only take abwabs, but make certain concessions to the ryots which are not elsewhere made. No rent is here charged for pasturage, nor is any charge made or contribution asked for water-work from the ryots. Then again throughout the district the ryot gets in sugar-cane and *banga* (cotton) Shikami lands cultivated by him, a deduction of 2 kattahs per bigha for which he has no rent to pay, and in some estates and villages he gets a similar deduction out of the chikuth lands. With reference to Shikami *Marooa-posta* and *Marooa-rubbi* lands he has to pay for every 2 kattahs per bigha at the rate of one rupee less than his ordinary rates of those crops. To the landlord he pays, in addition to the amount calculated on the crop-rates fixed for him, a *Dustoor* generally of one anna and sometimes of half an anna per bigha which is taken by the Malik, and *hujtana* or the Patwari's fees for receipts at the rate of one anna per cultivator, besides the fees of the ordinary village establishment, namely, that of the amin, gumashtah, weighman, &c., who, as shown above, all work both for the landlord and the tenants in a certain portion either per bigha or per rupee, varying in each village and pergannah. In all these rent discussions we have had questions about standard pole and standard bigha always raised and mooted, but none up to this time about the coin in use among the landlords and tenants in the calculation and settlement of their yearly accounts. The coin in use among them in the district of Gya is the sicca rupee, which they convert into the current coin by adding exchange rate under the name of *batta mal*, varying from $\frac{4}{5}$th of an anna to $\frac{3}{4}$th and $\frac{1}{2}$ anna in different villages per sicca rupee, and batta company varying from 1 to $\frac{3}{4}$th and $\frac{1}{2}$ anna in different villages on the total sicca rupees, plus the total *batta mal*. The coin which was current in the country before the year 1773 was the coin which was struck in the time of Shere Shah and adopted by Akbar and his successors. It was considered the purest of all coins, and consequently, when in the year 1773, the Calcutta sicca coin, known as the Murshedabadi, was introduced, a certain exchange rate called *batta mal* was levied to

equalise the value of the new coin with that of the old one. Mr. Wilson says that 100 sicca rupees was equivalent to 116 current rupees. At the time of the Regulation of 1793 rent must have been paid in the coin then current with the *batta mal*. Any subsequent change of coin would necessitate the levy of exchange rate upon it to equalise with the substituted coin. Act XVII of 1835 introduced the Company's rupees into the country, the value of which under section 4 of that Act is $\frac{15}{16}$th of the Calcutta sicca rupees, *i.e.*, to say, a sicca ruppee was considered equal to $1\frac{1}{15}$th Company's rupee. This change led to the levy of further exchange rate called *batta company*. The realisation of the exchange rates cannot therefore be considered as an illegal cess; on the contrary, it is a just and legal one, being part of the rent. Neither are the cesses realised as contribution from ryots by the landlord for the payment of the necessary expenses of the establishment illegal, inasmuch as the establishment must be kept and maintained for the benefit both of the landlord and tenant. The abwabs on the bhowli stand on a far different footing as above referred to. I might add that my present views of the abwabs have been accepted by the District and the Subordinate Judges' Courts. Decrees are now being awarded for the so-called abwabs, nakdi and bhowli, as being part and parcel of the rent. One of these hotly-contested cases went up in appeal before Mr. Porter, the then District Judge, and his finding and judgment on the question of abwabs, and generally on the bhowli tenure, and peculiar circumstance of the district are so full and conclusive that I cannot resist the temptation of quoting a good portion from the same here: "On the nakdi rents the plaintiffs claim the following cesses, namely, Hujootana, a fee of 1 anna per head, payable by the ryot towards the patwari's salary; batta company 3 pice per rupee in the rent. These two cesses have been admitted by the defendants and allowed by the Lower Court. In addition to these I find the following batta mal at 3 pice per rupee. Dustoor at $\frac{1}{2}$ anna per bigha. Sonari or allowance payable to the village weighman, $\frac{1}{4}$ anna per rupee. Rusti Dak (or post cess) at 5 annas per cent. The plaintiff has proved by the evidence of the patwari and some of the other ryots of this village that these cesses have been paid for many years, and there can be no doubt that such cesses are prevalent in this district. The question is whether such cesses can be legally recovered as part of the rent. This depends on evidence of custom (see I. L. R., 1 All., p. 440). As a rule I am averse to allowing the realization of these cesses in addition to the rent payable in cash, as it was undoubtedly the intention of the Legislature that landlords should incorporate these cesses with the rent, and abolish them as far as possible, and many instances have come to my notice where the landlords after incorporating and adding these cesses to the rent and consolidating as required by the regulations, have still continued to levy the cesses on the ryots. But, on the other hand, there are many instances where the ryots have opposed any such consolidation of the rent and have preferred to pay at the old rates, plus the cesses which have been collected from time immemorial as part of the rent. It is not the defendant's case in the present suit that the cesses now demanded have ever been consolidated with the rent, but his case is that these cesses have never been paid. I am clearly of opinion, from the evidence adduced by the plaintiffs, that this allegation is utterly false. It is not probable that the other head ryots of the village would have admitted the payment of these dues, if they had not been in the habit of paying them, and where custom is proved, I think that even in nakdi rents the tenant is bound to pay. Two of the cesses claimed, *viz.*, the Hujootana and the batta company are admitted, the other cesses come to a little more than an anna in the rupee, and against this it is shown that the landlord makes an allowance of 2 kattas in the bigha in sugar-cane and chikuth lands for which he charges no rent. If a calculation were made and the full rent charged on the 2 kattas per bigah, which are excepted, and all the abwabs or cesses claimed were disallowed the ryot would be in a worse position than he is now. This system of account appears complicated to the uninitiated, but it is the system which has been prevalent in the district from time immemorial and must therefore be recognized by our courts. The evidence given in this case satisfactorily establishes the custom, and I am of opinion therefore that the plaintiffs are entitled to the cesses which they claim on the nakdi rents. As regards the bhowli tenure the matter stands on a somewhat different footing. The point to be decided is to what share of the produce is the landlord entitled under the custom prevalent in the village. The history of the bhowli tenure in this district has yet to be written, but as it is calculated that nearly $\frac{3}{5}$th of the cultivated area of the district is held under this peculiar tenure, it is a matter of no little importance to both landlord and tenant to determine what share of the produce is payable as rent. Unfortunately the term abwabs has acquired in the courts an erroneous signification. It is generally translated to mean illegal cesses whereas there is nothing in the word itself which imports that meaning. A cess may be legal or illegal according to the circumstances of each particular case as applied to those dues claimed by the landlord. Under the bhowli system the term abwab may more correctly be translated manorial dues, *i.e.*, the dues which the landlord is entitled to under the established usage and custom of the country. Of course these dues vary in different villages and in different estates, but as a general rule it may be laid down that the landlord's share of the grain is seldom less than $\frac{9}{16}$th, and the ryot's share seldom more than $\frac{7}{16}$th. This fact is recognized by the people who have a proverb to the effect than the landlord's share is $22\frac{1}{2}$ out of every 40 passaris. It may be asked why the landlord should get more than half of the grain-produce and the cultivator less? To answer the question would involve a long disquisition on the pecularities of the bhowli tenure, but I may notice a few of the salient features of this system. In the first place the landlord does not in reality get a half share of the produce. He only gets a share of the grain. The straw, chaff, &c., is appro-

priated entirely by the cultivator. It will be noticed that the lower Court offered the defendant to divide the whole produce equally between him and the landlord, but this offer was refused, and why? Because it has always been the custom for a ryot to take the straw, &c. If so, the landlord should surely be allowed to plead that he is entitled to the dues he claims because the ryot has always been in the habit of paying them. Again the expenses connected with the maintenance of irrigation works on which depend the crop fall on the landlords; they also have to defray the costs of any litigation connected therewith. The very existence of the crops in the district depends on an artificial system of irrigation which has to be kept up at much expense. If system of payments in kind were converted into one of payment in cash the landlords would neglect to keep up these works, which under the present system it is for the mutual advantage of landlord and tenant to keep in good repair and working order. It must also be borne in mind that the landlord has to pay his Government revenue punctually in cash whether the season be good or bad, whereas the ryot having to pay in kind is not to the same extent affected by bad seasons. These and many other circumstances have to be taken into consideration in discussing the question of the bhowli system, and if a proper calculation were made it would be found that the $\frac{9}{16}$th of the grain produce, which I fix for the sake of convenience as the maximum usually leviable by the landlord, does not as a fact represent half of the gross produce. In other words if the $\frac{7}{16}$th which represent the cultivator's share, plus the value of the straw, &c., were placed on the one side and the value of the $\frac{9}{16}$th of the grain, which represents the zemindaree share, minus the expenses incurred by him in the maintenance of irrigation works, establishment, interest on Government revenue paid in cash, &c., on the other, it would be found that the tenant had little cause of complaint. Applying the above general principles to the present case let us examine the dues claimed by the landlord (or lessee) and the proportion they bear to the grain-produce. The plaintiffs claim the following, *viz.*, the neg or landlords' due of 1 seer 4 chattaks per maund, the pansaras or harvest fee of 5 seers, the Budhawara 2 chattaks per maund for payment of the wages of the village watchman, the *Pahbi* 4 chattaks per maund for payment of the wages of the priest, the nocha, 8 chattaks per maund for payment of the wages of the village establishment, *viz.*, the putwari 2 chattaks, the gumashta 2 chattaks, the amin 2 chattaks, the salis 1 chattak, the nawisinda (clerk) 1 chattak, the *mangun* 30 seers per plough, the sidha 10 seers per plough (putwaris' due.) The putwari and Jeth ryots examined on behalf of the plaintiffs give clear account of all these dues and depose that they have been paid from time immemorial. The defendant Chullun Mahton actually has the assurance to depose that he has never heard of any of them! The aggregate of these dues comes to a little more than 2 seers in the maund, so that out of every 80 seers of grain produced the landlord claims a little more than 44 seers, leaving the tenant a little less than 36 seers. If the landlord claimed $\frac{9}{16}$th as his share he would get 45 seers out of every 80 seers, so that it is clear that in this case his claim is not more than the maximum which I have fixed as the landlord's share of the produce *in grain*. Of course in some cases it may be shewn that the landlord is not entitled to so much, in others he may, under peculiar circumstances the onus of proving which would rest on him, be entitled to more. It is quite impossible to lay down any hard-and-fast rule. Every case must depend on the evidence adduced by the parties, but there can be, I think, no doubt that if the tenants are led to believe that they can evade their just dues by calling them Abwabs in spite of the fact that they have been paying them from time immemorial the relations between the landlords and tenants in this district will become so unsettled that there will be no end to the litigation. It is the duty of the Courts to look carefully into these cases and not lightly to disregard on the one side the landlords' dues based on the established custom of the country, and on the other the ryots' remonstrances if they can show that these cesses are exorbitant and have only recently been imposed. In the present case the evidence adduced establishes two facts, 1st, that these dues have been collected and paid from time immemorial, 2nd that having regard to the peculiarities of the bhowli system they are not excessive. In the case of Budhua, Orawan Mahton (defendant) appellant, *v.* Jamadar Baboo Jugeshar Dyal Singh, plaintiff (Respdt.) XXIV W. R. P. 5, it was held by the High Court that certain payments which were not so much in the nature of cesses as of rent in kind and which were fixed and uniform, &c., had been paid by the ryot from the beginning according to local custom were not illegal cesses, and so in this case. I find that these so-called abwabs are not illegal cesses, and I may here notice that in many cases which have been tried by the Collector the putwari has succeeded in establishing, as against the zemindar, his right to these dues, and I hold, therefore, where the custom is proved, that the zemindar is entitled to levy a half share thereof from his tenants."

38. The above extract from the judgment of such an eminent, learned and experienced Judge as Mr. Porter, who had made himself thoroughly acquainted with the manners and customs of the people and affairs of the district, is not only important on the question of abwabs, but also indicative of the great danger which would attend the commutation of bhowli into nakdi.

39. In another case, the hearing of which occupied two months in recording evidence as to the prevalence of the custom in the district, legalising abwabs, the present subordinate Judge of Gaya, Babu Kali Prasanno Mukerji, came to the same conclusion, both on law and facts, at which the District Judge had arrived. The following passages in his judgment are worthy of notice and consideration :—

"Then I take up the 4th and 6th issues which raise the question of abwabs. The abwabs are claimed by the plaintiff both for the nakdi and bhowli lands. The nakdi

abwabs are following: (1) dustoor at one anna per bigha, (2) hoojutana or putwari's fees at one anna per ryot, (3) batta mal at 16 dams per rupee, (4) batta company at one anna per rupee. (5) Negdaree at 8 dams per rupee. The bhowli abwabs are (1) neg, (2) pasera, (3) sonaree, (4) badhwaree, (5) mangun, (6) nocha.

"Now with regard to the nakdi abwabs, the plaintiff claims them as part and parcel of the rent, and the collection papers show that the juma plus the Abwabs being taken together, the consolidated sum is shown as the nakdi rent of the ryot. Then the question arises whether these abwabs are legally recoverable or not, and whether the plaintiff can recover them from the defendant. It is argued on the defendant's side that these abwabs are prohibited by law. Now the statutory provisions with regard to the abwabs are to be found in sections 54 and 55, Regulation VIII. of 1793, and section III., Regulation V. of 1812. Now section 54, Regulation VIII. of 1793 says: 'The impositions upon the ryots, under the denomination of abwabs mohtot, and other appellations from their number and uncertainty having become intricate to adjust and a source of oppressions to the ryots, all proprietors of land, and dependant talookdars shall revise the same in concert with the ryots, and consolidate the whole with the asal into one specific sum.' This section does not prescribe any penalty if no consolidation is made of the abwabs with the asal juma. Section 55 only prohibits the imposition of new abwabs upon the ryots under any pretence whatever. Section III, Regulation V of 1812 says:—'That nothing herein contained shall be construed to sanction or legalize the imposition of arbitrary or indefinite cesses, &c.' Then it goes on to say 'the Courts shall enforce * * * payment of such sums as may have been specifically agreed upon between them' (parties). The present Rent Act (VIII of 1869 B.C.) in section XI. only prohibits the exaction of abwabs. So looking to all the statutary enactments it seems to me that the abwabs, as claimed by the plaintiff, are not prohibited by law. The plaintiff alleges that these abwabs have been paid by the ryots from ancient times. The evidence adduced on the plaintiff's side proves the existence of a long standing custom in this part of the country to take these abwabs from the ryots. In fact they are treated as a partof the rent. The whole sum including these abwabs is entered in the books as the ryots' rent. They are certain and definite in proportion, and there is no difficulty in adjusting them. They are not new impositions on the ryot, for they have paid and acquiesced in by the parties concerned from days of yore. It would not be incorrect to say that they have been consolidated with the juma. For the consolidated sum appears in the papers as the ryots' rent and the items are separately mentioned only for the sake of adjustment and calculation. These abwabs have a customary sanction for them; and it would be a disturbance of an established state of things, if the court of justice should raise their hands against them now. Custom, I should observe, is a part of the law of a country, and court of justice in administrating the laws of the land, ought not to interfere with the custom. The evidence on the plaintiff's side shows that these items have been all along realised from the ryots as well as from the defendant. This would show that they were acquiesced in both by the zemindar and the ryot, and it would be disturbance subverting the existing relation between those parties were the court to stop those dues now for the first time. I should therefore observe that there is no reason why the plaintiff should not recover the abwabs claimed. They are neither new impositions nor indefinite cesses. For they have been in existence from older times, and their proportions are fixed. So they would not come within the statutory prohibitions abovementioned. The plaintiff indeed calls them as abwab, but there is nothing sinful in a name. For call them as abwab or any other thing they have always been regarded both by the landlord and the tenant as a part and parcel of the rent. In fact the whole consolidated sum including them as shown in the papers as the ryot's total rent. Under such circumstance I do not see why they should not be recoverable as rent. The law gives no other defination of rent than this that what is given to the landlord by the tenant in return for the use of his land as rent and when the ryots have from the begining been paying these items as a portion of their rent to the landlord in return for the use and occupation of his land, I do not see how they can be regarded otherwise than as rent. I am, therefore, of opinion that these abwabs are not illegal and are recoverable at law, and when it is proved by evidence that the defendant has all-along paid them, I think the plaintiff is entitled to recover them from the defendant. The bhowli abwabs stand on a higher footing. For they are only certain proportions of the produce of the land. There is no legal enactment in force prescribing the landlord's share of such produce. The evidence on the plaintiff's side proves that according to the custom of this country half share plus the items called abwabs together represent the landlord's share in the bhowli produce, and this would make the landlord's share more than half. It is also proved that the defendant has all along paid this larger share to the plaintiff I am therefore, of opinion, that when custom sanctions this larger share for the landlord and the defendant also paid the same share in the previous years, the plaintiff is certainly entitled to recover it. The defendant does not say that these abwabs were levied after the permanent settlement or that they are now in a position. He says that these were never paid by him. This is certainly a false statement of the defendant."

40. Apart from my individual opinion, the judicial findings of these two learned judicial officers of considerable experience are sufficient to show that the so-called abwabs, nakdi and bhowli, in Gaya at least, are really part of the rent payable or deliverable to the landlord. Section 85 which contains a too general prohibition against abwabs, would have the effect of doing away with the so-called abwabs which are really part of the rent as pre-

velent in this district. While the ryots would continue to get the concessions and deductions which have been made in their favour, the landlord, under this section, will be deprived of a good part of his rent for no other fault than that he had allowed them to be entered in the village papers as a separate item, for the convenience of calculations and keeping up of accounts.

41. The provisions of sections 87 to 94 are altogether new and quite unsuited to the present condition of the peasantry and the agricultural requirements of the district. I have already shown that irrigation and other works of improvement in this district are constructed and maintained by landlords only, and, that it would be dangerous to put them into the hands of the ryots. The provisions of sections 88 and 89 will work very harshly upon a bhowli landlord, and by introducing a source of dispute in a matter on which there had hitherto been no difference, may ultimately lead to a collapse in agricultural improvements. The provisions for registration of improvements and recording of evidence as contained in sections 91 and 92, however, desirable in theory, will not work well in practice. Considering the number of improvements that are daily made almost in every village, the Collector or revenue officer, appointed for the purpose, will be flooded with applications under these sections, and the proper, effectual and timely working of these sections would necessitate in our district the appointment of as many officers for the purpose as there are sub-divisions, and tax heavily the already drained purse of both landlords and tenants, and at least, these registers and records of evidence will only be corroborative evidence in the civil court whenever any question of improvement would arise between the parties in which the landlord will have to prove the improvements made by him by positive and direct evidence. So the game will not be worth the candle, while section 46 of the Bill imposes a sort of penalty on the landlord in that his suit for enhancement will be dismissed if he omits to register the improvements. The ryot is placed under no such disability for omission to register the improvements, if any, made by him. Section 90 gives power to non-occupancy ryots to construct suitable dwelling houses for himself and his family with all necessary out-offices, and section 87, sub-section 2, clause would make the construction of such buildings as improvements, and section 93 entitles such ryots, when they commit such acts as would make them liable to eviction to demand compensation from the landlord. There is no limit as to the nature of the building such ryots are to erect. They may erect a good costly pucca building and demand very heavy compensation for the same, which, in most cases the landlord might not be able to pay and thus be unable to seek ejectment, even where the law gives him the right to do so against a ryot who might have committed the grossest breach of contract and rendered the land under his cultivation quite unfit for the purposes of tenancy. There are many well-to-do persons of the class of mohajuns, mukhtears and amlas living in villages who do not care so much for cultivation as any how to annoy and trouble the landlords with a view to compel them to sell their estates to them. These sections therefore might, in the hands of unscrupulous ryots of this class, be made to work unjustly against the landlord. It will be extremely difficult, if not impossible, for the Collector to take the construction, maintenance and management of the irrigation works of this district, which, as detailed above are too numerous and intricate to be managed by Government officials, with that comparative cheapness and care with which the parties interested have done and will do.

42. In districts where, as in Gaya, lands, whether bhowli or nakdi, are measured every year, such a yearly measurement being absolutely necessary for a satisfactory settlement of accounts between the landlords and the tenants. The provisions of section 99 sub-section (2) which prohibits the landlord making any measurement within 10 years without the consent of his tenant or the written permission of the Collector, the exceptions (*a*) and (*b*) not being sufficiently explicit and wide to cover such yearly measurement, would seem to throw difficulties on the settlement of the annual accounts between the parties. The standard of measurement, prescribed in section 101, would fall far short of the standards which have prevailed in this district from time immemorial. There are two standard measurements prevalent in the district one for the Tikari Raj called the maharajee or *see purd* standard bigha which is equal to (180 feet × 180) and the other for the other estates of the district called the *zuptee* which is equal to (165 feet × 165 feet).

43. In a country where the Hindoo and the Mahomedan Laws of inheritance are prevalent every estate or tenure which is not joint now, is liable within the course of a few years to come under the joint possesion of the several heirs of its present single proprietor or holder, and as a matter of fact, such estates or tenures under single proprietors or holders are very few in number in this district. Thus the effect of the provision of Sections 102 to 108 which provide for the appointment of managers for joint estates tenures, would be to deprive the owners of about all the estates and tenures of their natural right and power to manage their own affairs, and to place them under the management of the Court of Wards, Collectors or Managers appointed by the District Courts.

44. The provisions of these sections will be seized by large and rich shareholders to reduce the income of their petty co-sharers with a view to compel them to give up or sell their shares, as the works of such management, must necessarily be very heavy and prove a great burden upon the estates or tenures most of which are already so encumbered. Owners of estates might avoid the appointment of managers under the Partition Act, but tenure-holders have no remedy whatever. Extremely emergent cases in which it might be necessary

to interfere by temporary attachment or otherwise, are sufficiently provided for, by Sections 26 and 27 of Regulation V. of 1812 and Regulation V. of 1827, and the Criminal Procedure Code, Chapter VIII., has given all Magistrates full jurisdiction to prevent breaches of peace; and Sections 73 to 76 of the Bill would enable any ryot, in cases of disputes between cosharers, to protect his own interests by depositing rents. There is, therefore, no justification either in the interests of the public or in those of the tenants and the joint landlords, for the introduction of such a measure as the one under consideration, which having the effect of depriving individual owner and tenure-holders of the right to manage their own estates or Tenures, will not, it is fervently hoped, commend itself to the Government of Lord Ripon, who is so eagerly anxious and benevolently disposed to confer the boon of local self-government upon the people of India.

45. It being now an open secret as admitted on all hands that the majority of the landlords and tenants of this part of the country, who besides the payment of revenue or rent, as the case may be, in regular and strict instalments, have to meet other public demands upon their hands by way of cesses and taxes, are in straitened circumstances and drowned in debts, they cannot be in a position, and ought not to be made to bear all the expenses incurred by Government in preparing the record of rights, table of rents and record of proprietors' private lands, however desirable and expedient the provisions bearing upon these points may be. To saddle them with the costs of such preparation would be like placing the last straw on the camel's back, the cost incurred in preparing the record of rights and table of rates being recoverable from the parties as arrears of revenue due by them. What the legal, not to speak of the *illegal*, costs of such preparation would be, can better be imagined and inferred from what is incurred by the parties in carrying on the butwara proceedings under Act VI. of 1876 for the mere partition of their estates by metes and bounds.

46. On the subject of distraint I take the liberty to submit that it is not, as is wrongly believed, the offshoot of the English Law. In the Hindu period not only distraint and imprisonment but assaults and tortures as well, as is well-known from history, were resorted to for the realization of debts, whether rents or any other. This practice was kept up by the Mahomedan rulers. The British Government could not tolerate the inhumanity and cruelty practised, either in the Hindu or Mahommedan period, stopped the old practice to which the people had been inured; but at the same time seeing that without some sort of coercion it was next to impossible to realize rents or revenue and "as the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute of good faith to withhold the public dues and render the collection of them a source of endless litigation," passed on the 1st of May 1793 Regulation XIV of that year, authorizing sales of lands with the sanction of the Governor-General and empowering Collectors to commit, under orders of the Civil Judge, defaulting proprietors to Civil Jail, and to place their estates under attachment until the arrear was paid off, leaving it to the proprietor to contest the justness of the demand and to prosecute the Collector, if he proceeded illegally, for false imprisonment, by suit in the Civil Court. On the same day, Regulation XVII of 1793, was passed prohibiting land-holders and farmers, under the penalty of criminal prosecution from confining or inflicting corporeal punishment on their rent-payers. But as the language of the preamble of that Regulation shows "it being as essential to the prosperity of the country and the punctual collection of the public revenue, that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the Courts of justice, and incurring the delay and expense necessarily attending a law process for the recovery of every arrear" expressly sanctioned and recognized the zemindars' power of distraining without sending notice to any Court of justice, or any public officer, "the crops and other products of the earth of every description, the grain, cattle and all other personal property, whether found in the house or on the premises of the defaulter or in the house or premises of any other persons" and of selling the same through Cauzee or District Court, subjecting them at the same time to heavy penalty on the complaint of the ryot, if their demand turned out to be unjust, and their procedure contrary to the rules therein laid down. Regulation III. of 1794 took away from the Collector the power of confining defaulting proprietors, but confirmed the power of summary sale of their estates, with the sanction of the Governor-General, for the realization of the arrears due from them. Regulation XVII of 1793, however, failed to afford landlords that facility for realization of rents, which they required to enable them to discharge their liabilities to Government. The necessity for further legislation becoming apparent Regulation XXXV of 1795 was passed. Beginning with the preamble "Government not admitting of any delay in the payment of the public revenue recoverable from proprietors and farmers of land, justice requires that they should have the means of levying their rents and revenues with *equal punctuality*," in addition to the power of distraint which it improved, it provided for the realisation by landlords, of rents by a summary application to the Judge, after serving notice of demand on the defaulter, for any sum exceeding 500 rupees which could not be recovered by distraint of the personal property of the defaulter. Still the above provisions both as regards the payment of Government arrears by landlords, and payments to the latter of their rents, were found ineffectual, so much so that in July 1799 some of the members of the Board of Revenue "recommended," says Mr. Field in his introduction to the Regulations page 80, "and strongly urged a recurrence to the former practice of confining the "the landholders for enforcing the payment of arrears." Accordingly on the 29th of August 1799 Regulation VII of that year was

passed. Its preamble ran as follows. "The powers which landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payments of rents due to them from their under-tenants, having in some cases been found insufficient, a considerable delay having also of late occurred in the payment of the public revenue due from many of the landholders which though ascribable in some instances to the cause above mentioned can in others be imputed only to a want of good faith on the part of certain of the zemindars and other landholders who taking *advantage of the delay with which the process of disposing of their lands unavoidably attended, have withheld the payments of their instalments until the day appointed for sale.*" By this Regulation, therefore, the rules and power of distraint as laid down in the Regulation XVII. of 1793, were considerably improved and simplified so as to expedite the recovery of rent by that process, and so also the rules for summary application to the Judge under Regulation 35 of 1795 were amended, the Board of Revenue got full power of ordering sales without reference to Government, and the Collector the power of attaching estates of the defaulting proprietors. The sale procedure underwent further modifications in the subsequent Regulations and Acts and with it also the landlord's summary procedure of realising rents. A careful perusal of the Regulations and Acts, repealed and unrepealed, down to the year 1859 would establish beyond all doubt that any improvement in the law effected to secure to Government prompt and timely payment of revenue, was attended with corresponding changes and improvements enabling landlords to realize their dues from the rent-payers under them with like promptitude and punctuality and, that from the very beginning the legislature saw and recognised the injustice of driving landlord to the necessity, in every case, of bringing ordinary regular suits in the Civil Courts, while Government itself possessed and enjoyed a simple and summary sale procedure of recovering arrears, of revenues from them — an injustice which it always anxiously sought to avoid. But the year 1859 witnesses a sudden change in this wise and long observed policy of Government. By Act XI. of that year the summary sale procedure for the realisation of Government Revenue, is made more simple and expeditious than before, but Act X. of that year does not only deprive landlords of the right of summary suit, or application which they had enjoyed ever since the year 1795, but, crippled and mutilated very much the power of distraint which they had exercised from time immemorial, both before and after the passing of Regulation 17 of 1793. The Laws and Regulations which it repealed had given to the landlords power of distraining all the personal property of their defaulting tenants wherever placed or removed, but section 68 of Act VIII. of 1869, B. C. (which is re-enactment of Act X. of 1859) makes only the *produce* of the *land*, for which the rent is due, as liable to distraint, and only for one year's arrear. Section 72 compels him before distraining, to serve a notice of demand upon the tenant, and section 75 gives him liberty to seek the assistance of the Court in cases in which he apprehends resistance. After service on the tenant under section 73 of a list of the property distrained, section 78 entitles him to apply to Court for sale within five days after distraint, and section 80 leaves no discretion in the Court but to depute an officer to hold sale, and to serve notice upon the tenant either to pay or institute a suit to contest the demand within 15 days. If no payment be made or no suit brought within that period, the sale must proceed. A ryot resisting or forcibly or clandestinely removing is liable under section 101 to imprisonment for six months in the civil jail, or until he pays off the arrear for which the distraint was made. None of these provisions were new, but only re-enactment with material modification of the provisions of the repealed Regulations. Sections 80, 81, and 82 give the ryot power of contesting the demand and of getting the sale suspended by a suit in which the onus of proving the correctness of the demand lies, under section 95, on the landlord. A ryot who omits to sue, within the period of 15 days, may yet bring a suit for damages under section 97. Section 98 also gives him the right to sue for damages where the powers of distraint have not been exercised in accordance with provisions of the Act, while section 99 subjects an authorized distrainer to damages, as also to a penalty of a fine of 300 rupees or imprisonment for two months. These provisions of the present law secure to the tenant greater protection against abuses of the power of distraint than he had under the Regulations. Since 1869 circumstances have altered and new liabilities have been imposed upon the landlord so as to necessitate the sengthening of his power of distraint rather than taking away or weakening it. The landlord now is not only responsible, and his property liable to sale, not only for Government revenue, but for road and public works cesses, whether payable by him, or by his tenants. "Government not admitting of any delay in the payment" of public demands payable by proprietors, not only on their own account, but on that of their tenants as well, "justice requires" now as it did for a period of upwards of sixty years before the passing of Act X. of 1859 "that they should have the means of levying their rents and revenues which *equal punctuality*;" and the reason that "the delay that must necessarily attend the institution of a law process for the recovery of every arrear would encourage persons destitute ofgood faith to withold the rent due from them and render the collection of them a source of endless litigation" is stronger now than it was before. The "delay and the expense necessary attending a law process for the recovery of every arrear" having now increased by more than three times, it is more "essential to the prosperity of the country and the punctual collection of the public revenue that landholders and farmers of land should have the means of compelling payment from defaulters without being obliged to have recourse to the courts of justice" by regular suit, now than it was then. But it is disappointing to find that the Bill by sections 139, 140, and 141, compels the zemindar to go to Court for an order for distraint, and prove

his claim with such evidence as he would have to adduce in regular suit, and gives to the Court a discretion either to grant or refuse his application, or even delay the proceedings by which the object of distraint might be defeated, as the ryot might in the meanwhile remove the crops for which he would have strong temptation. The issue of a prohibitory order against the removal of the crops pending the proceedings is also left to the discretion of the Court. Such a distraint as this, in my humble opinion, is no distraint at all. It will neither save the landlord from expense of litigation nor give him the means of recovering his rents with that "punctuality" which would enable him to discharge the public demands upon his lands. In my humble opinion the present law of distraint which protects the interest of both the parties should be left as it is. If any revision is desired it should be more in favor of the landlord whose liabilities have increased than in that of the ryot. The experience of the past has clearly shown that without some coercie measures, "it is impossible to secure punctual payment. The number of persons "destitute of good faith" is not less among the Behar peasants than in those of elsewhere, and it is only the law of distraint, as it is in the law in force, that operating as a moral force, has helped the realisation of rents. The position of a landlord with a summary sale law and certificate procedure, hanging over his head threatening to sell all, and, with tenants under him, having the power and option the Bill proposes to give then, of withholding and delaying punctual payment of rents, and subjecting him to the trouble, vexation and expense of going to Court for every arrear, is certainly a miserable position. The power of distraint has no doubt been abused and sometimes carried beyond its legitimate objects, but that is due more to the ignorance of both the the landlord and tenants, that to any defect in the law itsef. There is hardly a landlord or tenant in Guya, who knows any thing of the law governing the relation of landlords and tenants. Both parties have been acting and conducting their affairs on traditions and long standing orthodoxical, and conservative beliefs and habits. And what appears to us as tyrannical and illegal is not considered so by the real actors and the actual sufferers. The present state of things which the Bill tries to improve can only be remedied by spread of education and knowledge.

47. I might be permitted to add that the more easy and simple the position of a landlord is made by legislation, the more likely he would be to treat his tenants with kindness and justice. Nothing short of a simple procedure for realising his rents, whether nakdi or bhowli would better his condition and his relation with his tenants. Having considered the chapter of the Bill on judicial procedure in the light of the experience which I have gained in the trial of rent suits, I have been persuaded to think that suits for arrear of rents based upon registered documents or other reliable and trustworthy writings such as printed counterfoil receipt, bound and regularly paged printed form of measurement, laggits, and danabundi papers, might with advantage be governed by the Small Cause Courts Procedure, Negotiable Instruments, or, by re-enacting with necessary modifications and provisions for summary applications for realization of rents, which were in force before the passing of Act X of 1859.

48. If there have been oppressions and extortions on the part of the landlords, there have been equally systematic temptations and combinations on the part of the ryots to withhold and delay the payment of rents unless compelled; and if in justice and fairness ryots are entitled to legislative protection against oppressions and extortions, the landlords are equally entitled to legislative assistance for recovery of rents with *punctuality* and *promptness*.

49. I might here be permitted to take this opportunity of stating in plain and unmistakeable terms that the views which I have expressed in this report are in strict consonance with what I have entertained on the subject from a long time, and are in no way inconsistent with, or antagonistic to, what I have given expression to from to time regarding the necessity of revising the Rent Law, and of thus removing a misunderstanding or misinterpretation of my views, which seems to have prevailed in some quarter by the publication of a solitary and isolated piece of extract from my report of 1877. In that report as well as in those which preceded and followed it, I did not only describe the miseries of the ryots of the *Ryain* class, but also the difficult situation of landlords with respect to the turbulent fighting and intriguing ryots of the Soorfa class, and showed that both ryots and landlords required legislative protection against each other.

50. In conclusion I have only to observe that although I am not blind to the necessity of a revised Rent Law, which will serve to redress the grievances of both land lords and tenants, yet I am more alive to the fact that the more complex and intricate the law relating to landlord and tenants is made, the greater the difficulties of agriculture, and expense of litigation, and the worse therefore, the condition of both. No legislation, however, strong, well-meaning, and clearly defined it may be, will help to ameliorate the condition of the agricultural community unless it tends to promote good-will and cordial feeling between the landlords and the tenants.

51. Lastly I have to offer you my best and warmest thanks for the honor you have done me by giving this opportunity of expressing my views on a subject of such grave importance, and to solicit your indulgence for the many defects and shortcomings, which are undoubtedly to be found in this report, but which are attributable, not to any want of zeal or interest on my part in the subject, but to a feeble and failing health which is gradually undermining my constitution.

No. 123, dated 29th December, 1884.

From—Secretary, Central Committee of Landholders of Bengal and Behar,
To—Secretary to Government of India, Legislative Department.

I have the honour to forward herewith the memorial adopted at a general meeting of the landholders of Bengal and Behar held at the Calcutta Town Hall on the 19th instant, and to request that you will submit the same for the consideration and orders of His Excellency the Viceroy and Governor-General in Council.

To—His Excellency the Viceroy and Governor-General of India in Council.

The memorial of the Zemíndárs, Taluqdárs and other Landholders of Bengal and Behar, in meeting assembled—

HUMBLY SHEWETH,—That your memorialists are the descendants, or the representatives, of the zemíndárs, as they are called, with whom the Marquis of Cornwallis made in 1793 what is known in history as the Permanent Settlement of the land revenue in the provinces of Bengal, Behar, and Orissa.

2. That much discussion has taken place as to the actual *status* of the zemíndárs at the time when this settlement was made, its opponents generally maintaining that the zemíndárs were mere collectors of the land revenue and held no proprietary rights in the soil.

3. That without entering upon this discussion, your memorialists believe that it is now generally admitted that, while this contention may have accurately represented the *status* of a small number of the zemíndars, the great body of these gentlemen were the owners of the land in the only sense in which ownership thereof was recognized by the Muhammadan law, which prevailed in the provinces, and had prevailed for centuries, before their administration was transferred to the East India Company.

4. That that transfer was made by the Mogul Emperor Shah Alum in the year 1765 by an express grant under an Imperial firman bearing date the 12th August.

5. That the nature of the land revenue, the right to which was made over in perpetuity by that firman to the Company, was very imperfectly understood until long after its acquisition.

6. That all doubt upon the subject has been cleared up by the researches in particular of the late Colonel Galloway, the late General Briggs, and Mr. Neil, B. E. Baillie, author of "The Muhammadan Law of Sale," "The Muhammadan Law of Inheritance," and "The Land-tax of India, according to the Muhammadan Law," the authority of whose writings has long been considered unimpeachable in the Law Courts of the Empire.

7. That the last-named of these authorities opens the preface of the last of these works with the following impressive statement :—

"The most important of the rights acquired by the East India Company by cession or conquest from its predecessors in the Government of India is the *khiráj* or land-tax, which has existed in that country from early times, and was probably imposed upon it soon after its conquest by the Muhammadans. In Bengal the right to this tax was conferred on the Company by an express grant from the Mugal Emperor Shah Alum, under a firman bearing date 12th August, 1765; and neither in that presidency, nor in any other part of India, have the East India Company, or their Local Governors, ever pretended to any greater rights in respect of this particular tax than belonged to the preceding Governments under the acknowledged law of the country. It has, therefore, always been considered a matter of importance to ascertain as correctly as possible the nature and limits of that tax according to the Muhammadan Law, which was not only the general law of the country, but was more especially that which determined the rights of the Government and the people to each other."

8. That it was this law which the East India Company undertook to maintain and administer under the Imperial Firman of 1765, and to which they were required to adhere strictly by 24 George III, Chapter 25, section 39, under which Act the Court of Directors were required to give orders for settling and establishing "upon principles of moderation and justice, according to the laws and constitution of India, the permanent rules by which the tribute, rents, and services of the *Rájás, Zemíndárs, Polygárs, Taluqdárs*, and other native landholders should be in future rendered and paid to the Company."

9. That in obedience to the orders of Parliament thus registered, Lord Cornwallis, after protracted and earnest enquiry into the assets of the land and the rights and privileges of dependent tenure-holders and cultivators of the soil, determined to commute the immemorial State claim to a share in the produce of the soil at a money rental amounting to about three crores of rupees, admitting of no alteration, and fixed permanently upon the soil itself; and in the firm belief that he would thereby best promote the interests of all classes of the people and the interests of the East India Company's treasury, declared the zemíndárs, *whatever they were before*, the proprietors of the soil, His Lordship's avowed intention being to preserve, or to create, in the Bengal Provinces a landed aristocracy after the model of the same great body in his own country.

10. That the Regulations which embodied this settlement, as it was called, defined the rights of the different classes of dependant tenure-holders and cultivators of the soil, and declared that, subject to certain prescribed restrictions regarding lands in the possession of the then resident raiyats or cultivators, "the zemíndár or other actual proprietor is to let the remaining lands of his zemíndari or state," &c. &c., "in whatever manner he may think proper." The Regulations further declared that they, the zemíndárs, "would enjoy exclusively the fruits of their own good management and industry," and that "no power will then exist in the country by which the rights vested in the land-holders by the Regulations can be infringed or the value of landed property affected.

11. That owing to the assessment imposed upon the zemíndárs being fully ten-elevenths of the gross rental payable to them, and to economic and other causes, this fixed annual payment was far beyond the power of the zemíndárs to bear. These causes were the complete exhaustion of the provinces by the long period of misrule which preceded the Company's acquisition of the Díwaní as it was called, in 1765, and the remorseless exactions which followed on the part of the Company's servants; partly also from mistaken estimate of the resources of the people; partly from the cruel extortions of the men to whom the revenues had been "farmed" for collection; and partly from the dreadful famine which desolated the provinces in 1770, and in which ten millions of the people are believed to have died of hunger or disease, with the effect of reducing two-thirds of the cultivated area of the provinces to jungle.

12. That the assessment proving too grievous to be borne, the result of the settlement was speedily seen in the ruin of masses of the zemíndárs within seven years, and the threatened extinction of the entire class, their estates reverting to the Government. So great, indeed, was the extinction thus effected of old families of landholders, that the number of zemíndárs of the present day with whose ancestors the settlement was made, represents an insignificant fraction of the total, the great body of landholders having come into the possession of their estates by subsequent purchases.

13. That your memorialists have recalled these facts only to show that, although conceived with the most benevolent intention, the settlement which was thus made with their ancestors and predecessors was not one of their own seeking, or for their own advantage, but was imposed upon them to the immediate ruin of a multitude of old families in the provinces of whom your memorialists are survivors or successors.

14. That happily for your memorialists, the blessings of peace which followed upon the establishment of the Company's rule in these provinces led very rapidly to a great increase in the population, and to a wide extension of the acreage under tillage. Land which had relapsed into jungle, and wastes that had never before been cultivated within the memory of man, under the assistance and encouragement of your memorialists were brought under the plough, until the assessments which were at first ruinous to them became lightened by being spread over a wider area of tillage, and by the great change which has gradually taken place in the value of money during the century of years that has gone by.

15. That your memorialists having represented the manner in which the settlement was made, have now to solicit your Excellency's regard to a short history of the measure which threatens to interfere seriously with the rights and privileges secured to them by that settlement.

16. That since the trial of rent-suits was transferred in 1868 by an Act of the local Legislature from the Revenue Courts to the regular Civil Courts of the country, landholders have experienced great difficulty in recovering arrears of rent by reason of the heavy expenses and delays incidental to the procedure of such Courts. When, therefore, Government imposed upon them in 1870 an obligation to collect the road-cess from their tenants, and to make good to Government all deficits in collection of the same, Government promised to enact a law for giving them summary powers for the recovery of both rent and cess. This promise was repeated in 1875, when a similar obligation was imposed upon landholders for the collection of the public works cess for Government.

17. That in the year 1876 Government brought a Bill into the Local Council with the avowed object of giving landholders facilities in the collection of rent and cesses, but the objection was then raised for the first time that no such facilities could be given without making changes in the substantive law regulating the relations of landlords with their tenants. The Government at last appointed in 1879 a Commission for the purpose of drafting a Bill relating to landlord and tenant, on principles which might appear to them just and proper. This Commission, known as the Rent Commision, drew up a report upon the subject in 1880 and drafted a Bill enbodying the recommendations contained in their report. The Bill was designated the Rent Bill, but upon publication its provisions were found to be based upon such obvious delusions as to facts, and so subversive of the interests in which it professed to be drafted, that it was abandoned almost immediately. Since then Bill after Bill has been drafted with no better result; and at last a Bill has been introduced into the Viceregal Council, known as the Bengal Tenancy Bill, which subverts the vested rights of your memorialists, ignores altogether the authority and the accepted interpretation of the old regulations and innumerable deliverances of previous Administrations and of Her Majesty's Judges on the

subject, and which is so opposed to the economic conditions under which cultivation is carried on in Bengal, and so violates immemorial customs, usages and rights to which the people cling, that the measure will, if it becomes law, plunge the provinces into inextricable confusion, and produce a sea of litigation such as the world never before witnessed.

18. That your memorialists now find themselves in this position, that after nearly a century of supposed proprietorship of their estates the Bill practically confiscates their proprietary rights altogether. Their ancestral rights, extending back in a multitude of cases to time immemorial, as well as the rights which were forced upon them in 1793, are by this Bill to be legislatively declared non-existent, or to be swept away on the monstrous pretence that they have been oppressive, rackrenting and evicting landlords, the notorious fact being that so unwisely low have been the rentals they have levied, that a great mass of middlemen have grown up between them and the cultivator, who are living upon the margin of the rental which your memorialists had abandoned to the cultivator.

19 That these grave charges are so wholly unfounded that they could never have been framed had any inquiry whatever preceded the measure. Enquiry would have shown that so great—they may say truthfully so mischievous—has been the moderation with which they have asserted their rights, that the cultivator (raiyat) has long become the virtual landlord over wide districts of these provinces, and that your memorialists find great difficulty in collecting the rent admitted to be due by him. That the Government is well aware of this fact, and has itself experienced so much difficulty in realising or enhancing the rents due to itself on the estates that still belong to it, that it has had to pass Act after Act on its own behalf to enable it to beat down the opposition which the cultivator raises to the payment of any just rent whatever, however moderate.

20. That your memorialists cannot speak the sense they have of the wrong that is being done to them by branding them with oppressions that have never been practised by them, and that the slightest enquiry would show to be imaginary. That your memorialists believe the Government itself has at last become aware of the delusions under which Bill after Bill has been brought forward, only to be shown to be practically impossible and abandoned That your memorialists appeal earnestly to Your Excellency to arrest the present measure, and to compel the institution of those enquiries which your memorialists affirm will show at once the delusions under which the measure has been drafted.

21. That your memorialists claim, as a matter of unquestioned right, to be entitled to collect in perpetuity under the settlement, and on their own behalf, what they were collecting before that settlement on behalf of the Government. That Lord Cornwallis himself forced them into this position by imposing the settlement upon them, exacting from them as its price the perpetual annuity which they are still paying in consideration thereof. And that your memorialists have used the rights conferred upon them by the settlement with conspicuous moderation is susceptible of the simplest and most conclusive proof.

22. That should the measure be preserved with and become law under the strange delusions in which it has been conceived, it will not only be, your memorialists submit, a breach of faith, but will confiscate numberless rights in the soil which have existed from time immemorial, and been respected by every conqueror thereof, will unsettle the relations of every man with his fellow, and plunge sixty millions of people into a boundless sea of litigation. That your memorialists, therefore, implore Your Excellency that before this measure goes any further, the question of the rights vested in your memorialists by the settlement of 1793, and of the power, if any, reserved to Government for interfering with those rights, be submitted to Her Majesty's Judges for adjudication after hearing counsel, and that a Commission of Enquiry may be appointed publicly to receive evidence of the charges which have been brought against your memorialists and assumed to be true in the teeth of every reasonable presumption that could be given that they are wholly and altogether false. Your memorialists are to be ruined. their estates confiscated, their character traduced, and ancient institutions concerning the land abolished, which are to this hour the economist's "ideal" in Europe on the gratuitous opinion of a small number of officers under the Government of Bengal, that it would improve the relations that now exist between your memorialists and their tenantry were these officers allowed to recast them all upon certain views of what they call "tenant-right," the tenants of your memorialists themselves praying earnestly that the customs, rights, and usages which this measure sweeps away may be preserved as vital to their continued well-being.

23. That your memorialists crave reference to the many memorials and petitions which they have heretofore submitted to the Government of India and to Her Majesty's Secretary of State in Council for India with reference to this Bengal Tenancy Bill. They have therein shown that no cause of necessity has been made out for any radical changes in the land-law of the country; that the Settlement Regulations do not warrant the assumption by Government of a power to take away by legislation, in the way they purpose to do, the rights vested by that settlement; that the Bill rests on an entirely erroneous view of the status and rights of landholders before and after that settlement; that if passed into law it will prove a source of endless litigation between the zemíndár and raiyat; and that the effect of its operation on the economic condition of the people will be disastrous in the extreme.

In the full conviction that Your Excellency will listen to their reasonable prayer for an opportunity of vindicating their rights, and for an enquiry into the charges against them, upon which the Bill rests, your memorialists humbly pray that Your Excellency will, after taking into consideration the facts and arguments above set forth, be pleased to suspend the further consideration of the measure until the representations of your memorialists have been considered by an impartial and competent tribunal.

And your memorialists, as in duty bound, will ever pray.

LAKSHMESHWAR SINGH, OF DURBHUNGA,

Chairman.

To His Excellency the Viceroy and Governor-General of India in Council.

The humble memorial of the Khas Mehal ryots of Government Estate Jalamuta, villages Paikbhera, Harmasah, &c., District Midnapur.

MOST HUMBLY SHEWETH—That the rights which khas mehal ryots as well as other ryots have to the land they cultivate are recognized by custom all over the country. That the British Government too has repeatedly recognized these rights, specially by the Regulations of 1793.

That it may be safely asserted to be a fact, that these rights embrace all the incident of full proprietary rights subject only to the customary land tax due to the State.

That notwithstanding these facts, in the case of khas mehals, the Government has practically ignored the rights of the ryots by placing itself beyond the powers and jurisdiction of the courts of law.

That in all cases of conflicting interests between the Government and khas mehal ryots, the present law is, to leave the settlement of such matters to the discretion of the executive officer of Government, who represents only one of the parties to the disputes in these cases. That, in short, the settlement officer is his own law as regards the justice or injustice of act done by him.

That such a state of things is not reasonable and proper, your Excellency's memorialists need hardly say. That however well-meaning or discreet a person may be, he can never be expected, nor can he himself honestly trust, to keep the balance of justice evenly between him and another person to whom he is opposed.

That it may be thought, in comparing between settlement officers and zemindars in relation to the ryots that the former are disinterested, and the latter interested in oppressing and rack-renting ryots. That it is not quite correct to think so. For if the zemindar is interested in taking as much from the ryot as possible, his permanent relations with the ryots cannot but inspire him with a great measure of sympathy for the ryots, while the settlement officer has, on the one hand, no cause to feel that sympathy for the ryots, but on the other, he has nearly the same sort of motive to rack-rent the ryot as the zemindar, the difference being that the motive of the one is to please himself and that of the other to please his superiors

That the Government itself in 1793 was earnestly anxious to prevent the evil which your Excellency's memorialists are complaining. That this will be apparent from the following extract from the preamble to Regulation of 1793 :—

"The collectors of the revenue must not only be divested of the power of deciding upon their own acts but rendered amenable for them to the Courts of Judicature and collect the public dues subject to a personal prosecution for every exaction exceeding the amount to which they are authorized to demand on behalf of the public and every deviation from the Regulations prescribed for the collection of it."

That according to the present law, the foregoing principle of justice and equity enunciated by the Legislature of 1793 stands violated on two points of vital importance to your Excellency's memorialists, *viz.*, on the point of adjustment and enhancement of rent and on the point of the realization of rent.

That Act VIII of 1879 and VII of 1880 have only to be referred to to show how flagrantly these two Acts violate the principle mentioned in the Regulation.

That as regards the working of Act VIII of 1879, your Excellency's memorialists trust that your Excellency is already aware how in the case of your Excellency's memorialists and other khas mehal ryots of Midnapur, the said Act has been worked to reduce your memorialists to destitution and ruin by enhancing their rents far above the prevailing rates of the neighbouring private zemindars, and all this, while the Government is fully aware of the unfertile and arid condition of the lands your memorialists occupy and also of the fact that they always live with the apprehension of famine before them at the least failure of a crop.

That Your Excellency may have been informed that some of the brother khas mehal ryots of your memorialists appealed to the High Court, while the majority including your memorialists were too poor to carry on litigation and have been compelled to put up with the state of destitutions to which they have been reduced by the settlement proceedings in question.

That your memorialists are bound to say that khas ryots of other quarters may feel themselves somewhat relieved, seeing that the present Rent Bill intends to repeal Act VIII of 1879. But your memorialists most humbly submit that the repeal of Act VIII of 1879 comes too late for your memorialists, as that Act has already done its work of destruction as regards themselves.

That Act VII of 1880, to which your Excellency's memorialists have referred, gives the Revenue Officers powers of a peculiar character. Whenever they have any claim against a ryot for arrears of rent, they can convert that claim according to their pleasure into that solemn and irrevocable instrument of justice called a decree. That no doubt the law requires a notice to be served upon the ryot to apprize him of the intentions of the Collector. But as a matter of fact. it is well known that such notices as a rule are not served. That in many cases the tenant learns of the proceedings when all his properties, moveable and immoveable, are about to be hammered down to a stranger.

That the outrageous character of such proceeding will be apparent when your Excellency kindly considers that generally the responsibility of the proceeding does not rest really on the Collector or Deputy Collector but on patwarees or petty collecting sarkars. That men of this class are no better than patwarees under zemindars and are by no means above temptation such as might lead them in many cases, not to give full credit to the ryots for payments made. That the Collector's records are made on the faith of these men. That yet the ryot is placed by the above Act in such a hopeless position to contest the correctness of the demands made on such a basis.

That your memorialists earnestly pray that your Excellency will be pleased to provide for your memorialists all the safe-guards to protect the rights of your memorialists against the arbitrary acts of settlement officers, which Government has justly thought its duty to provide in the case of ryots of private zemindars.

That, in short your memorialists pray that the Government will be pleased to extend to khas mehals all the rules and provisions contained in the present Rent Bill in favor of ryots by repealing in addition to Act VIII of 1879, also Act VII of 1880 and such other Acts.

That the points on which there should be a difference between the case of the ryots of private zemindars and that of those of khas mehals are points on which, according to reason and justice, there should be a difference in favor of khas ryots, and that, on such points, more favorable provisions should be made in the case of khas mehal ryots than in the case of zemindari ryots.

That your memorialists will mention two such points:

First, that in khas mehals, all ryots whatever should be declared occupancy ryots, as there is no reason to make any distinction as regards khas mehal tenants between some ryots and others, dividing them into occupancy and non-occupancy ryots. That such a distinction does not in fact exist.

Second, that inasmuch as Government, unlike private zemindars, does not, in many cases, resort to enhancement proceedings to raise the rents of individual and isolated ryots only, but it proposes to raise the prevailing rates of a whole mehal whenever it has recourse to settlement proceedings, the interval which the law should require to elapse between one settlement and another should be extended at least to 30 years, though the interval may be only 15 years, in the case of zemindari ryots, in whose case wholesale enhancements of entire mehals is not usual.

That Your Excellency's memorialists would also venture to submit that the chapters in the Rent Bill empowering Government to make records-of-rights and settlement of rents should be omitted from the Bill.

That your memorialists earnestly urge this, as they have by bitter experience learnt that the executive officers of the Government failed to exercise powers like these with any degree of satisfaction, your memorialists' prayer is that the Government may be empowered to constitute temporarily judicial Boards presided over by judicial officers to exercise the said powers.

That Your Excellency's memorialists also submit that the ground of enhancement based on an increase of price is not a proper ground. Because high prices mean great distress to men of the class of your memorialists who, for portions of the year, have to buy food grains. That then again, if there is a tendency to a gradual rise of price of food-grains your Excellency should kindly remember that there is also a tendency of the soil becoming less productive. That therefore setting the one tendency against the other, the law should remove this ground of enhancement which is a creation of recent times.

That your memorialists also beg to submit that, by long existing custom and tradition, tanks and reservoirs of water as well as common pasture grounds which used to be left in each village as khas pateet, were not assessable with rent. That recently, settlement officers have begun to assess such lands, that your memorialists beg to say that this is improper and unjust. That by the common law of the country and by the provisions of Hindu law the king should not levy land revenue on lands of the above description.

Your Excellency's memorialists earnestly crave your Excellency to consider your memorialists' grievances and kindly to remedy them. Your Excellency's memorialists pray that Your Excellency will order a reasonable reduction of the extraordinary high rates to which the rents of your memorialists have been raised by the cruellest rack-renting process, and also that the Rent Bill be amended so as to meet their grievances.

Dated 27th December, 1884.

From—Babu Sarat Chandra Mukhopadhyay,

To—Private Secretary to His Excellency the Viceroy.

I have the honour to forward herewith a memorial signed by myself and my brother landholders of the district of Rungpore, and to request that you will be pleased to submit the same to His Excellency the Viceroy for his orders.

Memorial of Proprietors and Taluqdárs of Rungpore District.

To—His Excellency the Viceroy and Governor General of India.

The humble memorial of the undersigned Proprietors and Taluqdárs of the District of Rungpore in the Province of Bengal.

MOST RESPECTFULLY SHEWETH,—That the rumour that a Bill, contemplating radical changes in the law which governs the relation of landlord and tenant in the provinces of Bengal and Behar has been introduced by Government, has so much disturbed the agrarian economy of the part of the country to which your memorialists belong, that the tenants have been emboldened to withhold payment of rents and deny their yearly rentals in many instances, and generally to assume an unsatisfactory and hostile attitude towards them.

The changes contemplated in the Bill which is now before a Select Committee of the Legislative Council are all in the direction of the expansion and enlargement of the tenant-right to the derogation of the rights of your memorialists.

That although hitherto, with the exception of a short period, the judicial determination of disputes and the adjustment of relations between landlord and tenant were left, as a part of the general administration of justice, to the constituted tribunals of the land, and the system has worked eminently well from the time of Lord Cornwallis downwards, still it is contemplated in the Bill to vest in the executive officers of the Crown semi-judicial functions of deciding questions relating to the status of tenants, the nature of their rights, the fixity of their tenures, and, what is still more a matter of grave anxiety to your memorialists, the validity and fairness of contracts on behalf of the tenants; and the most important of these functions will have to be performed not by the chief executive and presumably most experienced officer of each district, but by subordinate agency in the Revenue Department.

That the Bill proceeds mainly on the assumption that the tenantry of these provinces are rack-rented and subjected to wholesale eviction at the hands of the landlords; that the assumption is wholly disproved by forensic statistics.

Your memorialists would beg humbly to invite Your Excellency's attention to the figured statements given every year in the Report of the Administration of Civil Justice, recorded and circulated to the subordinate courts by the Honourable High Court of Calcutta.

That they find that from 1875 to 1880, a period of six years, the total number of ejectment-cases instituted throughout Bengal and Behar was only 10,799, which gives an average of nearly 1,800 per year; dividing this number by the number of districts under the Honourable High Court, the yearly average of ejectment-cases for each district is about 43.

Your memorialists further beg most respectfully to bring to Your Excellency's notice that it would be found on enquiry that the rate of rent in all parts of Bengal and Behar is invariably moderate, and in the majority of instances extremely low; and they earnestly submit that a thorough enquiry by a duly constituted Commission should have preceded the introduction of the Bill.

But your memorialists regret that not only was there no enquiry on this vital point, as also on other matters on which legislation has been based, but oppressive conduct on the part of your memorialists in enhancing rents and evicting tenants having been postulated, and certain doctrines and principles with regard to the nature of the rights of the tenants having been postulated, the Bill proceeded in the lines of the aforesaid views and proposed supposed remedies; that although long subsequent to the introduction of the Bill, the executive officers of the Government of Bengal and a few judicial officers were consulted, the reports submitted by these gentlemen were based, not on the results of investigation, but on their individual views and sentiments; that His Lordship, the Chief Justice of the Calcutta High Court, as also another Judge of the same august tribunal, the Honourable Justice Field, two of the most eminent and learned Judges of the Honourable Court, both condemned the main provisions of the Bill.

That the leading and well-informed newspapers of this Presidency have also strongly disapproved of the Bill.

That under the above circumstances your memorialists respectfully but earnestly entreat Your Excellency to abandon the Bill, as it is wholly uncalled for, as it threatens to embitter the relations between your memorialists and the tenantry which were hitherto entirely satisfactory, and as it threatens to open the flood-gates of protracted and ruinous litigation and also be the resources of the nation in law expenses amongst an impoverished people.

And your memorialists as in duty bound shall ever pray.

Dated 8th January 1885.

From—BABU RAJKISSORE MUKERJEA, Utterpara,

To—The Secretary to the Government of India, Legislative Department.

I have the honour to forward herewith a memorial to His Excellency the Viceroy signed by me and a number of vakils of the High Court practising at the High Court and Hooghly

in connection with the Tenancy Bill now under consideration of His Excellency's Legislative Council.

Sixty spare copies of the memorial are herewith submitted.

Hoping you will lay it before His Excellency and his Council.

To the Viceroy and Governor General of India in Council.

The humble memorial of the under-signed tenants of Bengal.

MOST RESPECTFULLY SHEWETH,—That your memorialists notice with great regret that no provision has been made in the Bengal Tenancy Bill with regard to *bastu* lands or homesteads. The only section which refers to such lands is section 216 which runs as follows: "When a raiyat, holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom."

2. That your memorialists have always felt it as a great grievance that the law relating to homesteads has never been formulated by the legislature, and that it has been allowed to be shaped entirely by judicial decisions based on judicial discretion.

3. That your memorialists have under the circumstances above set forth never been able to ascertain the law relating to homesteads and it has always appeared to them a pure matter of accident how a particular Judge will decide a particular case involving the law of homesteads.

4. That in consequence of the exclusion of *bastu* lands from the class of lands over which occupancy right could be acquired, men who have been holding *bastu* lands for two or three generations have been arbitrarily ejected upon the mere service of a notice on them by the landlord.

5. That your memorialists have found very often that English Judges when they have to decide cases in regard to *bastu* lands regulate their judicial discretion by their conceptions of English law. They regard all tenants as tenants-at-will unless there is clear documentary proof to the contrary, and in the absence of any specific contract they hold the landlord entitled to eject his oldest tenant upon the mere service of a notice. In Bengal, however, tenancy-at-will and its necessary consequence arbitrary eviction have never been recognised. The rent which the raiyat pays is only a land-tax, and he cannot be ejected so long as he pays his determined rent. This principle was recognised by the authors of the Permanent Settlement. The idea of evicting a raiyat from his holding on any other ground than non-payment of rent was foreign to the authors of the Regulations. In Act X of 1859 also, sections 21, 22 and 78 authorize the cancellation of leases and actual eviction only on non-payment of rent. The English lawyer, however, has always insisted that the landlord has an inherent right of eviction and that the only defence to a suit for ejectment would be a specific agreement.

6. That your memorialists have been greatly alarmed by the judgment of the Calcutta High Court in *Prosunno Kumari Debea* vs. *Sheik Rutton Bepary* reported in the Indian Law Reports, 3 Calcutta Series, page 696. The judgment gives some indication of the previously unsettled state of the law, but it practically settles the law by declaring that for whatever length of time a man may have held *bastu* land he may be turned out any day upon being served with a notice. Your memorialists submit that such a view of the rights of the *bastu* tenant is seriously detrimental to the interests of the entire body of the Bengal peasantry. It is extremely difficult to prove the existence of a custom satisfying the conditions which would make it valid in the eyes of a Court, and practically a man would have no defence if the most capricious attempt were made to turn him out of his ancestral home.

7. That your memorialists in view of the danger of leaving the law relating to *bastu* land unsettled and in view of the ruinous consequences of the ruling of the High Court above referred to, beg leave to submit that the law may be definitely settled by Your Excellency's Council and specially they pray that it may be provided in the Bengal Tenancy Bill that rights of occupancy shall accrue in all *bastu* lands.

And your memorialists, as in duty bound, shall ever pray.

No. L.9-301, dated 7th January, 1885.

From—His Highness the Maharaja of Burdwan,

To—The Secretary to the Government of India, Legislative Department

As the greater portion of my estate is let out in putni, I cannot but feel deeply interested in any Bill which proposes to amend the Putni Law. I therefore beg to send the accompanying Notes, and request the favour of your laying the same before His Excellency the Governor General of India in Council for favourable consideration.